

U.S. Department
of Transportation

United States
COAST GUARD



ADMINISTRATIVE SEPARATION BOARD MANUAL

COMDTINST M1910.2



COMDTINST M1910.2
AUG 9 1999

COMMANDANT INSTRUCTION M1910.2

Subj: ADMINISTRATIVE SEPARATION BOARD MANUAL

Ref: (a) Personnel Manual, COMDTINST M1000.6(series)
(b) Administrative Investigations Manual, COMDTINST M5830.1(series)

1. **PURPOSE.** This Manual describes policies and procedures for conducting and processing administrative separation boards (ASBs), including administrative discharge boards (ADB), and waivers thereof for enlisted Coast Guard members. Entitlement to such boards is governed primarily by Chapter 12 of reference (a). The provisions of this Manual also apply to reenlistment boards, subject to the requirements of Articles 12.B.5. Personnel Manual, COMDTINST M1000.6A, and may be incorporated into other directives by reference. This Manual is intended to enhance the internal administration of the Coast Guard, and except for the rights listed in paragraph 1-E, it does not establish procedural or substantive rights for Coast Guard members or others.
2. **ACTION.** Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, Assistant Commandants for Directorates, Chief Counsel, and chiefs of special staff offices at Headquarters shall ensure compliance with the contents of this Manual. No paper distribution will be made of this instruction. Official distribution will be via the Coast Guard Directives System CD. An electronic version will also be made available via the Commandant (G-W) website.
3. **DIRECTIVES AFFECTED.** The following provisions of references (a) and (b) are superseded by this instruction, and will be amended accordingly in a future change:
 - a. Personnel Manual, Articles 12.B.31.b (ADB Composition) and 12.B.31.f (Limits to Board Findings).
 - b. Personnel Manual, Article 12.B.32.a. with respect to the right to counsel only (the remainder, concerning requirements for ADB findings for discharge under other than honorable conditions, remain in effect); Article 12.B.32.b (Discharge Procedure) subparagraphs 1-5; 12.B.32.d.(Convening); 12.B.32.e (Board Action); 12.B.32. g and h (formats for waivers).
 - c. Administrative Investigations Manual (AIM), Article 6.L, and enclosures 20 - 23 and 25.

// signed //
Thomas F. Fisher
Acting Director of
Personnel Management

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Chapter 1 - INTRODUCTION, GENERAL POLICIES AND DEFINITIONS

A. Definitions

For purposes of this Manual, the terminology used in Personnel Manual, COMDTINST M1000.6A, Article 12.B.2., applies. References in this Manual are to Personnel Manual, COMDTINST M1000.6A, Change 29. In addition:

1. An "Administrative Separation Board" or ASB (also known as an "Administrative Discharge Board") is a fact-finding body appointed to investigate a member's suitability for retention in the service, render findings based on the evidence obtained, and make specific recommendations for use by Coast Guard separation authorities. The determinations of an ASB are advisory only, not binding upon the Coast Guard.
2. "Convening Authority" is the Coast Guard official who establishes and directs the actions of a specific ASB. Ordinarily this is the member's commanding officer or a senior in the chain of command.
3. "Separation Authority" refers to the Coast Guard official authorized to order a member discharged or separated from the Coast Guard. For most members entitled to Administrative Separation Boards, Commander, Coast Guard Personnel Command holds this authority.
4. "Respondent" refers to a member whose separation or reenlistment is the subject of the Board's inquiry. Generally, any action that may be taken by Respondent may be taken by Respondent's Counsel on behalf of Respondent.
5. "Findings" generally includes findings of fact, opinions, and recommendations of the Board.
6. The term "Coast Guard" includes the Coast Guard Reserve.
7. "Servicing Legal Office" is the Coast Guard legal office responsible for providing legal support and advice to the Convening Authority, normally the district legal office for district commands, and the MLC legal office for MLC and Area commands and Headquarters commands without a legal officer assigned.
8. The term "Minority" means a segment of the population possessing common traits by descent or common characteristics and a cultural heritage significantly different from that of the general population.
9. "Recorder," "Member," "Reporter," "Legal advisor" and other ASB participants are discussed in Chapter 3.

B. Reasons for Administrative Separation Boards

1. Coast Guard discharge and retention decisions are driven by the needs of the Coast Guard overall, not by the needs of individual members or individual commands. Members do not have a right to remain on active duty in the Coast Guard, regardless of the length of their service or the hardship their separation might cause. Nevertheless, a member's military career often represents a considerable investment, both by the member and by the service. In addition, when a member is discharged, the Coast Guard's characterization of that service - as honorable, general under honorable conditions, or other than honorable - and occasionally other determinations surrounding that decision, can have a profound impact on the member's future. Sound personnel management, as well as fairness, dictate that the decision to separate such a member be carefully considered, and that the member be provided an opportunity to be heard and to present and challenge evidence to be considered by the separation authority.
2. For these reasons, the Coast Guard Personnel Manual, COMDTINST M1000.6A, provides that enlisted personnel of the Coast Guard with more than eight years service (or members with 180 days service subject to discharge for homosexual conduct), may not be involuntarily separated prior to the end of an enlistment for misconduct, unsuitability, or other specified reasons, or denied reenlistment, unless they have been provided the opportunity to be heard before an ASB. In addition, the Personnel Manual, COMDTINST M1000.6A, provides that no member may be discharged "under other than honorable conditions" (OTH discharge) without first being afforded the opportunity to present his or her case before an ASB. A member who requests an ASB may not be discharged under other than honorable conditions unless the ASB recommends such a discharge.
3. Consult the Personnel Manual, COMDTINST M1000.6A, or other governing directives to determine whether a particular member is entitled to an opportunity to be heard before an ASB.

C. Scope of Inquiry

1. An ASB documents the facts relating to the Respondent's conduct, competency, background, character and attitudes, so that the separation authority may properly determine whether the member should be retained or separated, the reason for separation, and the proper characterization of the member's service that should be reflected in any separation documents. In its deliberations regarding separation, the Board's foremost consideration is whether separation or retention is in the best interest of the Coast Guard. Available statements from superiors and peers, and available records bearing upon Respondent's suitability for retention, are among the types of evidence to be considered by the Board.
2. The Board shall inquire into, assemble evidence, and provide findings of fact, opinions, and recommendations regarding all matters relevant to the decisions before the separation authority; including:

- a Whether the Respondent should be retained or separated from the Coast Guard;
 - b The extent to which the evidence supports separation for specific reasons listed in Personnel Manual, COMDTINST M1000.6A, Chapter 12;
 - c The proper characterization of the Respondent's service (i.e., Honorable, General under Honorable Conditions, or Other than Honorable) using the standards provided in Personnel Manual, COMDTINST M1000.6A, Article 12.
 - d Any other issues specified in the convening order.
3. Issues regarding separation for physical disability will be handled under the Physical Disability Evaluation System, and are beyond the scope of the Board's inquiry.

D. Effect of Prior Criminal Adjudications

Criminal courts, in protecting the rights of a person accused of a crime, apply a strong presumption of innocence which can only be overcome by proof of all elements of a crime beyond a reasonable doubt under strict evidentiary standards. In contrast, an administrative separation is not a punitive action, but an employment decision. An ASB is concerned with a member's performance, traits of character, personality disorders, ethical behavior, honor, and other behavior in evaluating that member's potential for effective continued service in the Coast Guard. The factual findings of an ASB are therefore based upon a "preponderance of the evidence" (i.e. "more likely than not") standard.

1. Acquittal. An acquittal or finding of "not guilty" by a state, federal, or military criminal court has no effect on the Board's factual determinations regarding the allegations of which the member was acquitted. Note, however, that under the existing Personnel Manual, COMDTINST M1000.6A, Art. 12.B.32.a.(4), a member may not receive an OTH discharge based on conduct for which he or she was acquitted on the merits at court-martial. Otherwise, a member acquitted by a court may be separated based on the facts and circumstances that were charged in the criminal prosecution.
2. Conviction. Because of the protections and standards inherent in a criminal trial, criminal conviction of an ASB Respondent conclusively establishes the elements of the crime for an ASB. This includes convictions based on guilty or "no contest" pleas, and convictions in U.S. courts-martial, federal courts, and state courts, regardless of whether the conviction is pending review, appeal, or clemency action. ASBs shall not make findings which are contrary to such criminal convictions, but shall adopt the court's findings to the extent that they are material to the matters before the Board. The legal advisor to the Board can assist the Board with determining which matters have been conclusively determined by a conviction. This rule does not preclude the Respondent from presenting matters to the ASB that relate to the criminal case, but are relevant to other matters before the Board.

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E. Rights of Coast Guard Members before Administrative Separation Boards

1. A principal purpose of ASBs is to accord the Respondent an opportunity to be heard and to present evidence regarding the matters upon which an adverse separation decision may be made. Each member who is entitled to appear before an ASB shall be given written notice of (1) the factual basis for separation processing, (2) the minimum characterization of service that may be awarded, (3) the fact that adverse consequences may result from a general or other than honorable discharge, (4) the opportunity to request an ASB; and (5) an opportunity to consult with military counsel regarding the decision to request an ASB.
2. Failure to request an ASB within the time limit established in accordance with CH-2-C-3 of this Manual shall constitute forfeiture of any right to have the case considered by an ASB. The case shall then be processed as if the member expressly and unconditionally waived the entitlement to an ASB.
3. A member who is so entitled and requests an ASB shall be accorded the following rights:
 - a To be represented by counsel before the Board. A member who chooses to appear before an ASB is entitled to the appointment of a military counsel. If available, appointed military counsel shall be qualified under Article 27(b), UCMJ. The Convening Authority will provide an explanation in the record when counsel qualified under Article 27(b) UCMJ is not available. The member may also obtain civilian counsel at the member's own expense if so desired, but a member represented by civilian counsel is not entitled to the services of military counsel before the Board;
 - b To be present during the proceedings (except for members confined by civil authorities), but not when the ASB is in closed session;
 - c To examine and to object to the consideration of physical and documentary evidence and written statements;
 - d To object to the testimony of witnesses and to cross-examine witnesses;
 - e To introduce material, non-cumulative evidence, including witnesses, provided at Respondent's expense;
 - f To testify as a witness. A Respondent also has the right to refuse to testify (whether or not charged with an offense). However, a Respondent testifying as a witness shall be subject to full interrogation by the Recorder and Board members on all matters bearing on the Respondent's suitability for retention and other issues before the Board. If the member declines to answer questions, the testimony as a whole, or parts thereof, may be disregarded.

- g To make a voluntary unsworn statement, oral or written, and not be subject to questioning by the Recorder or members, to be included in the record of proceedings.
 - h To make an argument at the conclusion of presentation of evidence.
 - i To challenge members of the ASB for cause, and to have such challenge considered by the Convening Authority.
 - 4. Respondents before ASBs also retain other rights provided by law and regulation, as may be applicable, including
 - a To be properly advised as required by the Privacy Act of 1974. See Article 4-A, the Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3 (series), and enclosure (5).
 - b The right against self-incrimination, the right to make no statement regarding a charged or suspected offense, and the right to warnings regarding these matters prior to interrogation, as provided by Article 31 UCMJ.
 - 5. Any of these rights may be voluntarily waived, and any error will generally be forfeited by failure to make timely objection or otherwise assert the right in a timely manner to the Senior Member prior to or during the hearing, and to the Convening Authority at other times.
- F. Procedures of Administrative Separation Boards|&end_TA&|
- 1. The proceedings of the Board should be conducted substantially in accordance with the rules and principles prescribed in this Manual. Deviations from these requirements do not create any right to relief on the part of the Respondent, unless they substantially prejudice the rights listed above so as to adversely affect the decisions of the separation authority. Failure to follow the requirements of this Manual may, however, result in return of the case to the Board for further proceedings and result in additional costs to the Coast Guard.
 - 2. The specific purposes of the inquiry shall be given primary consideration in determining the procedures to be used when not expressly provided for in this Manual. The Board may, in its discretion, adopt procedural rules similar to those used for formal administrative investigations pursuant to reference (b), or for military justice procedures under the Manual for courts-martial (see, e.g. R.C.M. 405). The legal advisor to the Board may be helpful regarding such matters.
- G. *Time Goals.*
- The purpose and objectives of the administrative separations process are advanced by a timely disposition of the case. Every effort shall be made to adhere to the time goals prescribed below.

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Failure to process an administrative separation within the prescribed time goals (expressed in calendar days) does not affect the validity of a separation decision.

1. The time from the date of the letter notifying the member of the Convening Authority's intention to recommend a discharge to the commencement of the ASB hearing should be no more than 30 days. Generally the member should, upon request, be afforded at least 21 calendar days from this initial notification to allow adequate time to prepare for the Board.
2. The time from the commencement of the ASB hearing to the receipt of the ASB record, with endorsements, at Commander, CGPC, should be no more than 30 days.
3. The time from receipt of the ASB record by Commander, Coast Guard Personnel Command to final action of Commander, CGPC should be no more than 45 days.

Chapter 2 - NOTIFICATION, REQUEST, AND WAIVER

A. **Initial Actions** When a commanding officer recommends a member for discharge, or when discharge processing is required by other authorities or directives, and the member has a right to request an ASB, the commanding officer should:

1. appoint a project officer to serve as the command's point of contact throughout the process, and to coordinate any necessary action to be taken by the command as required by the Personnel Manual, COMDTINST M1000.6(series) and this Manual;
2. consult Personnel Manual, COMDTINST M1000.6(series), Chapter 12 and determine all applicable bases for the proposed recommendation for discharge;
3. gather all available information that provides support for all the applicable bases for the proposed recommendation for discharge;
4. determine the least favorable characterization of service that may be approved (see Personnel Manual, COMDTINST M1000.6(series), Articles 12.B.2. and 12.B.32.), in consultation with CGPC (epm) as necessary; and
5. consult with the servicing legal office as necessary for advice on the sufficiency of the evidence, and other issues related to the ASB process.

B. *Notification of the Member*

1. The member will be given official written notification of the recommendation for a discharge in accordance with Personnel Manual, COMDTINST M1000.6(series), Article. 12.B.9.e. This notice must include the provisions found in Articles 1-E-1 and 2-C-3. When there is more than one basis for discharge that may apply in the member's case, the notification should state each basis for the recommended discharge. No recommendation as to the character of service should be included in this notice. See enclosure (1) for a sample notification letter.
2. Acknowledgment. A member notified of a recommendation for discharge under this article will indicate receipt of the notification by completion of an endorsement. A personal statement by the member may be included in this response. A format for this acknowledgment is shown in enclosure (1). If the member refuses to sign such an acknowledgement, the command will document that refusal and proceed as if the member had acknowledged the notification.
3. Consultation with Counsel. If the member invokes the right to consult with counsel prior to deciding whether to waive the right to an ASB, a representative of the member's command should contact the cognizant Maintenance and Logistics Command legal office to obtain counsel for the member.

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4. Election of Rights. Members shall indicate their election of these rights by completing the election form provided in enclosure (2).

C. *Waiver and Forfeiture of Administrative Separation Boards*

1. Waivers. A member may explicitly waive an ASB. A format for an explicit waiver of an ASB is included in enclosure (2).
2. A member may waive an ASB on the condition that a specific minimum characterization of service is assigned. If a member desires to waive an ASB subject to other conditions and the command is inclined to support the request, it should contact CGPC (epm) for guidance. The member's commanding officer, a reviewing command, or Commander, CGPC has absolute discretion to deny a conditional waiver. The commanding officer shall deny any request for a conditional waiver unless its terms appear to be substantially justified and consistent with the Personnel Manual. A member whose conditional waiver has been denied must either request an ASB or unconditionally waive the Board, unless the denying authority has offered alternate conditions.
3. Forfeiture by Failure to Request a Board. Unless special circumstances dictate otherwise, a member should not be given more than 5 days from receipt of the notification letter, initial consultation with military counsel (if requested), or notification of denial of a conditional waiver (whichever is later), to decide whether to request an ASB. The member shall be advised of the effect of not responding within 5 days, or any extension granted, by the letter of notification. A failure to request an ASB within the allotted time set forth in the letter of notification shall constitute forfeiture of the right to have the case considered by an ASB, and the case shall be processed as if the member expressly and unconditionally waived the entitlement to an ASB. The commanding officer has the absolute discretion to deny a Respondent's late request for a Board, or to accept a Respondent's waiver of an ASB in lieu of a prior request for an ASB.
4. Members are strongly encouraged to consult with counsel prior to waiving or forfeiting an ASB.
5. Effect of Waiver or Forfeiture. Members who waive or forfeit ASBs shall be processed for separation in the same manner as those not entitled to an ASB. The notice and waiver described above, and documentation of any forfeiture, shall be included with the discharge documentation forwarded to CGPC.

D. *Members Confined by Civil Authorities*

A member unable to appear in person before an ASB by reason of confinement by civil authorities has no right to attend the hearing or appear personally before the Board, but may exercise the other rights through counsel. Notification shall be sent, by certified mail, return receipt requested, or equivalent, as required for members not so confined, except that the response period shall be extended to 15 days, after which these rights shall be forfeited.

E. Receipt of Request for Administrative Separation Board

When the member's request for an ASB is received, the command shall notify CGPC-epm, in writing, of the member's decision so that other actions may be suspended (e.g., PCS and other orders). If the member requests assignment of military counsel, the Respondent's command should contact the cognizant Maintenance and Logistics Command legal office to have counsel detailed to represent the member. Such counsel need not be the same counsel that advised the member regarding the request for the Board.

Chapter 3 - BOARD COMPOSITION AND DUTIES

A. *Convening Order*

If the member is entitled and requests an ASB, the commanding officer shall prepare an appropriate written convening order. Copies shall be provided to all participants. Enclosure (3) provides the general format to be used when convening an ASB. Convening Orders may be amended as appropriate.

B. Composition of Board

1. Members. ASBs shall consist of at least three commissioned officers, and it is seldom, if ever, preferable to exceed this number. These officers need not be of the same command as the member or the Convening Authority. The senior member shall be at least a lieutenant commander. The following requirements also apply:
 - a If the Respondent is a member of the Reserve, the Board includes a majority of Reserve officers, if reasonably available; if not, the Board must include at least one Reserve officer.
 - b If the Respondent is a woman, and if she so requests in writing at the time of her request for an ASB, the Board must include as a voting member a woman officer, if one is reasonably available. If not, the record of the proceedings must state that determination and the facts supporting it.
 - c If the Respondent is a member of a minority group, and if the respondent so requests in writing at the time of Respondent's request for an ASB, the Board must include as a voting member an officer who is also a minority group member, normally of the same minority group as the respondent, if one is reasonably available. If an officer of the same minority group is not reasonably available, or if no minority officer is reasonably available, the forwarding endorsement must state that determination and the facts supporting it.
2. Recorder. The appointment of a nonvoting Recorder for the Board is normally required. The Recorder need not be a law specialist, but must meet any requirements for this duty established by the Servicing Legal Office. If a nonvoting Recorder is not appointed, the junior member of the Board shall serve as the Recorder. Assistants to the Recorder may also be appointed. For example, if an understanding of the matters under investigation involves a high degree of technical knowledge, convening authorities are encouraged to appoint persons who possess this technical knowledge to assist the Recorder.
3. Legal Advisor to the Board. In most cases, the Servicing Legal Office will fulfill the role of Legal Advisor to the Board. A specific legal advisor to the Board is not normally appointed in

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the convening order. The Servicing Legal Officer or higher authority may nevertheless provide a specific legal advisor to be detailed to the Board when appropriate.

C. *Duties and Authorities of Board Participants*

1. The Senior Member of the Board. The senior member shall coordinate and decide all matters relating to the routine business of the Board, including all pre-hearing matters, scheduling of hearing sessions, procedures, and witnesses, and ruling upon motions and objections. Whenever it appears desirable to the Board that certain information be elicited or developed in the interest of establishing or clarifying any matter, the senior member will advise the Recorder and request that witnesses be called, further lines of questioning be pursued, or other evidence be produced.
2. Board Members. Attendance and participation in the proceedings of an ASB is the primary duty of any officer appointed as a member. Members may question witnesses and other hearing participants, and may propose any other action necessary to accomplish the purposes of the Board. Members are expected to be in attendance at the designated time and place unless prevented by illness, ordered away by competent authority, or excused by the Convening Authority.
3. Respondent's Counsel. Respondent's Counsel's primary duty is to zealously represent Respondent's interests before the Board. Any counsel detailed or employed to represent the Respondent shall immediately notify the Convening Authority, Senior Member, and Recorder, as appropriate, and provide appropriate documentation for inclusion in the record. Upon providing adequate proof of representation, Respondent's counsel shall be presumed to speak on behalf of Respondent, and Respondent is bound by the actions of counsel.
4. Recorder. The primary responsibilities of the Recorder are to assemble and present relevant evidence to the Board regarding the issues before it, to assist the Board in determining the relevant facts and applying relevant policy to those facts, and to coordinate preparation of the record. The Recorder must investigate all sources of information and present evidence to bring out the facts in an impartial manner, with due regard to the opportunity for Respondent to present evidence and argument on his or her own behalf. The Recorder arranges for, calls and questions witnesses, ensures that the command has arranged for adequate facilities and the assistance of reporters, interpreters, orderlies, and clerical assistants as required. Additionally, the Recorder administers any oath or affirmation to the reporters, interpreters, and witnesses and supervises the recording of the proceedings and the preparation of the record of proceedings. If the Recorder is absent, an assistant may, in the discretion of the Board, act as recorder and the proceedings may continue. Otherwise, the Board shall adjourn, report the absence to the Convening Authority, and request further instructions. Enclosure (7) provides general guidance that may be useful to the Recorder.

D. *Communications with the Board Members*

1. Convening Authority. Any communication between the Convening Authority and the Board members regarding the procedures or issues of the Board should be in writing with a copy provided to the Respondent. The Convening Authority may request specific issues to be determined by the Board, including whether the member should be discharged with an "other than honorable" discharge, but should express no opinions or recommendations regarding the issues before the Board. The Convening Authority should not normally be called as a witness in the case, but may be called when circumstances make such testimony relevant to matters before the Board.
2. Recorder. The Recorder may communicate with the Convening Authority and with the members as necessary regarding matters such as the scheduling and other logistics of hearings, and the availability of evidence or witnesses. The Recorder shall not present arguments or evidence to the Board members regarding the separation issues before it except during the hearing or as otherwise authorized by this instruction. Any evidence provided to the Board shall also be made available to the Respondent.

Chapter 4 - PRE-HEARING PROCEDURES

A. *Material Furnished to Participants Before the Hearing*

The Senior Member shall determine the exact time and location of the hearing, in consultation with he members, recorder, respondent, and Convening Authority. The Senior Member shall also coordinate mutual disclosure by the Respondent and Recorder of information to be presented at the hearing, so as to avoid unnecessary surprise and delay once the hearing has commenced. The Senior Member shall also notify the member as required by the Privacy Act. A sample notification letter for these purposes is provided in enclosure (5). Board members should not review or consider evidence regarding the matters before the Board prior to the hearing, except as strictly necessary in the performance of their assigned duties.

B. *Investigation*

1. Recorder's Investigation. Prior to the hearing, the Recorder conducts an initial investigation to assemble evidence for presentation to the Board. Relevant documents and other information should be obtained from the Respondent's command. Relevant witnesses (other than the Respondent) should be interviewed, and witness statements reduced to writing for later use by the Board. Documentary evidence should be assembled, and tangible evidence identified and marshaled for presentation to the Board.
2. Access to Witnesses and Evidence. This instruction does not provide the Respondent (or Recorder) a right to access to witnesses or evidence other than those actually considered by the Board. Records that the Respondent is entitled to under the Privacy Act or Freedom of Information Act should be made readily available. In addition, the Recorder and the Respondent should be permitted reasonable opportunities to interview witnesses and obtain other relevant available evidence prior to and throughout the hearing process. The Recorder and Convening Authority should facilitate this process as necessary.
3. Depositions. Depositions using written or oral questions may be obtained by mutual agreement of the participants. The use of audio or videotape is authorized. If the deposition might be required in a subsequent courts-martial proceeding, the deposition should comply with Rule 702, Rules for courts-martial, MCM, and should be obtained in consultation with the servicing legal office.

C. *Securing Attendance of Witnesses*

1. It is the duty of the Recorder to arrange for the attendance of the witnesses to be presented by the Recorder, for all local witnesses requested by the Board, and for all witnesses for whom travel orders have been approved by the Convening Authority. An ASB has no power to subpoena witnesses. The Board is never required to hear the testimony of a witness that is unreasonably cumulative with other evidence before the Board, or that is irrelevant, even if the witness is in attendance and prepared to testify.

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2. The Respondent, or counsel for the Respondent, will arrange for witnesses to be presented by the Respondent at no cost to the government.
3. While the Respondent has no right to production of witnesses at government expense, it may be in the best interest of the Coast Guard and the Respondent to obtain the testimony of a witness who has not been called by the Recorder. The Respondent may submit a written request to the Senior Member of the Board for temporary additional duty (TAD) or invitational travel orders or witnesses, or other assistance in obtaining the testimony of the witness. Such a request shall contain the following matter:
 - a Name, address, telephone number, command, and other information identifying the witness as necessary, and the specific assistance requested.
 - b A synopsis of the testimony that the witness is expected to give.
 - c An explanation of the relevance of such testimony to the issues of separation or characterization of service; and
 - d An explanation as to why written, recorded, or telephonic testimony would not be sufficient.
4. The Senior Member, after any necessary consultation with the legal advisor to the Board, shall determine whether the following requirements are satisfied, based on the application and other available information:
 - a the testimony of the requested witness is material and necessary (i.e., not unnecessarily cumulative) for a fair determination of the case,
 - b written, recorded, or telephonic testimony is not an adequate substitute for in-person testimony, and;
 - c The significance of the personal appearance of the witness, when balanced against the costs and difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the evidentiary value of the testimony; the cost of producing the witness, the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.
5. If all of these requirements are not satisfied, the Senior Member shall deny the request. Otherwise, the application with an appropriate recommendation shall be forwarded to the Convening Authority for approval and authorization of funds as appropriate

Chapter 5 - HEARING - GENERAL AND PRELIMINARY PROCEDURES

A. *ASB Guide*

The ASB Guide, enclosure (8), shall be used as a guide to conducting the Board's proceedings. In the event of a conflict between this Manual and enclosure (8), the Manual provisions take precedence.

B. *Sessions*

1. An ASB shall assemble at the place and time established by the Senior Member. The Board may adjourn, when desirable, to any place convenient to the Board. The members shall take their seats by seniority with the senior member in the center and the next ranking officers alternating at the senior member's right and left sides.
2. An ASB may recess for such time as is necessary without permission of the Convening Authority, except that recesses of more than three days must have the concurrence of the Convening Authority.

C. *Closed Sessions of the Board*

The Board may be closed at any time for deliberation or consultation, whereupon all persons but the voting Board members will withdraw. Alternatively, the voting members may withdraw to another room for deliberation or consultation. Closed sessions are not recorded, but any decisions resulting from the closed proceeding are normally announced once the hearing reopens. No member, or other person officially connected with the hearing, shall disclose contents of discussions during closed sessions of the Board without prior approval of the convening or higher reviewing authority.

D. *Legal Advice*

The legal advisor to the Board is responsible for providing impartial advice to the Board regarding its responsibilities, authorities, and other legal matters. Whenever legal advice is required, the legal advisor to the Board may be consulted. Such consultation, by telephone conference or other means as necessary, may be in open or closed session or any other manner approved by the Senior Member.

E. *Objections*

The Respondent and Recorder may object to any matter or decision of the Board at any time during the hearing, based on procedural error, infringement on the rights of the Respondent, or another appropriate basis. The proponent of an objection will state "Objection" and then provide a concise statement of the grounds for objection. The Senior Member will rule on all objections.

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F. Resolution and Preservation of Disputed Procedural Issues

1. The Senior Member shall normally resolve disputed issues on the admissibility of evidence or other procedure before the Board. However, if a member disagrees as to the action to be taken regarding a procedural issue, the member may demand a vote and a decision of a majority of the voting members will constitute the action of the Board. The Board may be closed, at the request of any member, to consult and rule on objections or disputed matters.
2. If the Respondent is not satisfied with the Board's resolution of the matter, the Respondent shall submit a brief written statement of the objection for inclusion in the Record (see enclosure (9)), the action taken by the Board on the objection, and the harm or prejudice to the Respondent caused by the error. Failure to make a timely objection or to preserve a record of an alleged error in this manner generally constitutes forfeiture of the error in subsequent review. Upon the receipt of a written statement of objection, the Senior Member will ensure that it accurately states the matter and the basis for the Board's decision by attaching or subscribing any additional appropriate comments.

G. Modification of Convening Authority's Instructions

If at any time during the course of the proceedings it appears to the Board appropriate to enlarge or restrict the scope of the inquiry, to alter the composition of the Board (whether by augmentation or substitution), or to cancel or otherwise modify any instruction set forth in the appointing order, a recommendation with supporting documentation should be made to the Convening Authority. The Convening Authority may take such action on this report as is deemed appropriate. Copies of any such communications and replies shall be appended to the record.

H. Absence of Members and Other Participants

1. Members.
 - a In the absence of a member, the Board may proceed with the hearing only if authorized and directed to do so by the Convening Authority. Unless a majority of the total membership is present, no business other than a recess shall be conducted. If it appears that a member will be absent for more than a short period of time and the absence reduces the Board to less than a majority of the total membership, the Convening Authority shall be advised.
 - b Any substitute or additional member appointed shall examine the record of the proceedings conducted prior to sitting as a member, which shall be noted on the record. After reviewing the record, each substituted and additional member shall participate fully in the subsequent proceedings of the Board, its deliberations, findings of fact, opinions, and recommendations.

- c When a member of the Board who has been temporarily absent returns, the record of that part of the proceedings conducted in the member's absence shall be examined by the member, which shall be noted in the record. A temporary absence does not preclude that member's full participation in the deliberations of the Board relative to findings of fact, opinions, and recommendations.
2. Respondent and Counsel.
- a Except when the Board is closed for deliberations or consultation, the Respondent (other than one confined by civil authority) shall be present with counsel unless that right has been waived or forfeited. A Respondent may expressly waive the right to be present during any portion of the ASB proceedings. This waiver must be knowingly made by the Respondent, or by counsel for the Respondent. Likewise, where a Respondent is represented by counsel, the Respondent may waive the presence of counsel at any session of the Board. The record shall affirmatively note the beginning and the end of any absence of any Respondent or counsel and shall note or include the express waiver of the right to be present by the Respondent.
 - b Unauthorized absence of a Respondent from the hearing of the Board constitutes a forfeiture of the right to be present at the hearing. The Senior Member should contact the Convening Authority for a determination whether the hearing should be held without the Respondent present.

I. Spectators and Security

- 1. Generally. The proceedings shall be public unless the Convening Authority or the Board, for security reasons or other good cause (which shall be noted in the record), directs that the entire proceedings or any portion be closed to the public. This decision is final.
- 2. Press. As a general rule, members of the press will be permitted to attend open sessions of an ASB. No special section of the hearing room need be set aside for the press. During any session of the Board, recording or videotaping, radio or television broadcasting of the proceedings, or the taking of photographs in the hearing room or from the hearing room is prohibited.
- 3. Exclusion of Witnesses. Witnesses other than the Respondent should be excluded from the hearing room except when testifying, or when the Board deems their presence in the hearing room necessary. For example, expert witnesses may not be able to testify in an informed manner unless they are fully aware of all the circumstances surrounding the incident under inquiry. In such instances, the record should affirmatively show that the witness was present during the testimony of other witnesses.
- 4. Classified Material. ASB proceedings and reports are subject to all applicable security directives. If it appears that classified information is relevant to the issues before the Board, the

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Senior member should advise the Convening Authority and servicing legal office to request specific instructions. Military Rule of Evidence 505 (Classified information privilege) may serve as a useful model for such cases.

J. *Reporters and Interpreters*

1. Reporters. A reporter will generally be assigned, under the direction of the Recorder, to record or summarize the hearing. Alternatively, the Recorder or a Board member may perform this function. The reporters appointed to record the proceedings of the ASB may use longhand, shorthand, or a mechanical or electronic recording device. The proceedings need not be reported verbatim, unless so directed by the Convening Authority. When not reported verbatim, the record shall include a list of witnesses and an accurate summary of their testimony. In the event the proceedings are to be summarized, the Respondent may, at the Respondent's own expense, make a voice recording of the proceedings, provided that a complete copy of the recording shall be delivered to the Board for forwarding with the record.
2. Interpreters. In all ASBs where testimony is to be given in other than the English language, an interpreter shall be appointed. Prior to assuming the duties of the office, the Board shall be satisfied that the interpreter is fully conversant with the language to be interpreted and has a good command of the English language. If it appears to the Board that the interpreter is experiencing difficulty in interpreting, or if there is an objection by the Respondent that the interpreter is not fully and correctly interpreting, the Board shall immediately inquire into the matter. If it appears that the interpreter is not able to interpret accurately, the Board shall report this to the Convening Authority and request that a competent person be appointed. Until the appointment of another interpreter, no further examination of the witness whose testimony is to be interpreted shall be undertaken. For witnesses provided at Respondent's expense, Respondent shall also provide or bear the cost of the interpreter.

K. *Record of Proceedings and Exhibits*

1. General. The record of the Board's proceedings shall include exhibits reflecting all evidence and other writings received by the Board. Documentary evidence submitted to the Board should, whenever practicable, be on 8.5" by 11" paper, one side only. Exhibits will be numbered or lettered in the sequence in which they are received. Letters should be used for evidentiary exhibits offered by the Respondent, and numbers should be used for all other exhibits. The proponent of the exhibit shall provide copies or otherwise permit all participants to review the exhibit at the time it is submitted for the record. Exhibits shall include all written matters presented to or considered by the Board, such as:
 - a The original convening order and any other written communications among the Convening Authority, the Board, and Respondent regarding the proceeding.
 - b Senior Member's notice to Respondent.

- c Summary of Respondent's Personnel Records.
 - d Summaries of witness testimony (see Art. 6-C-4).
 - e Evidentiary exhibits presented by the Recorder or Respondent, including records, directives, etc.
 - f Any unsworn statements of the Respondent.
 - g Written objections and the actions thereon. (See Art. 5-F-2)
 - h Arguments of counsel if reduced to writing.
 - i Statements or actions of the Respondent respecting the exercise or waiver of rights.
2. Real Evidence. It is frequently impracticable to attach real evidence (physical objects such as weapons, clothing, pieces of equipment, etc.) to the record. Photographs or other material clearly showing or describing relevant characteristics of the evidence should be substituted in the record for such evidence so that it may be properly considered on review. The person offering the evidence shall prepare the exhibit for the record.
 3. Custody. At the conclusion of the hearing, articles of real evidence or original documents not included with the record of the Board, should be delivered to the Convening Authority (or designated representative) for further use or disposition. When final action has been taken in the case, the articles should be returned to their owners.
 4. Copies. When original deck logs, bell books, or other Coast Guard records are received as exhibits, an accurate copy will be substituted when the record is prepared for submission.

L. *Oaths*

1. Members, recorders, interpreters, and witnesses shall all be sworn or affirmed. The Senior Member shall swear the Recorder, and the Recorder will normally swear all others. The person administering the oath will ask the person taking the oath whether the person prefers to swear or affirm (an affirmation does not include the words "swear" or "so help you God") Oaths shall be in the following forms:
 - a Members, Recorders, Reporters, and Interpreters. "Do you (swear) (affirm) that you will faithfully perform the duties of (member, recorder, reporter, interpreter) (so help you God)
 - b Challenged Members. When a challenged member is to be examined under oath as to fitness to serve, the Recorder shall administer the following oath or affirmation:

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"(Do you swear that you will answer truthfully to the questions regarding your competency to serve as a member of the Board in this case, so help you God) or (Do you affirm that you will answer truthfully to the questions regarding your competency to serve as a member of the Board in this case)?"

- c Witnesses. All persons who testify before the court shall be examined on oath or affirmation, administered by the Recorder before they first testify, in the following form:

"Do you (swear)(affirm) that the evidence you shall give to the Board shall be the truth, the whole truth, and nothing but the truth(so help you God)?"

M. *Advisement of Rights*

The Senior Member should review the rights set forth in section 1-E of this Manual with the Respondent, unless the Respondent waives this review.

N. *Challenges to Members*

1. The Respondent and Recorder shall be given an opportunity to question (voir dire) the members in order to ascertain whether they should be disqualified from Board membership because of personal bias or other good cause. The Recorder shall administer an appropriate oath to the members from this Manual. The Senior Member shall control the proceeding to the extent necessary to avoid undue delay, harassment and undue embarrassment of the members. Respondent and Recorder may, upon request, individually voir dire a member, at which point the other members shall withdraw. Respondent and Recorder must have a good faith basis in questioning members about specific facts relating to possible bias. A member may decline to answer irrelevant or unnecessarily intrusive questions, unless directed to answer by the Convening Authority.
2. Upon completion of the voir dire, if the Respondent has evidence showing good cause to remove a member from the Board, a challenge for cause may be asserted. Written argument, including a statement summarizing the evidence on which the challenge is based, shall be forwarded via the Recorder to the Convening Authority for a decision on whether the challenged member should be removed or retained as a member of the Board. The Recorder may also submit evidence or argument on the matter to the Convening Authority. In the case of a challenge, the Board proceedings should normally be stayed until the challenge is resolved. The information submitted to the Convening Authority and the Convening Authority's reply shall be appended as an exhibit to the record. The Convening Authority's decision on a challenge to a member shall be final. If members are disqualified, the Convening Authority shall appoint new members to the Board as necessary.

O. *Opening Statements and Closing Arguments*

The Recorder and Respondent (or Respondent's counsel) may each make opening statements and closing arguments on the issues before the Board. The Board may set any reasonable limitation on these presentations. In opening statements, Recorder and then Respondent typically summarize the facts to be proved. The closing arguments typically provide an analysis of the evidence, and its application to the issues before the Board. While the order is not critical, the Recorder usually presents the opening statement and closing argument first, and is allowed an opportunity to rebut the Respondent's closing argument (which is limited to matters raised by Respondent in closing). In addition, the Recorder and the Respondent's counsel may submit proposed findings, opinions, and recommendations in writing for the Board's consideration.

Chapter 6 - HEARING: EVIDENTIARY MATTERS**A. *Rules of Evidence***

1. The Board is not bound by the Manual for Courts-Martial's Military Rules of Evidence (MRE), except that the Board shall observe the privileges in section V of the MRE if asserted by a witness or other proper person.
2. Compliance with the general spirit of the MRE will promote orderly processing and insure a full, fair, and impartial hearing.
3. While any improper or illegal actions by the Government or the Respondent in obtaining evidence may be a factor affecting the Board's recommendations, evidence shall not be excluded from consideration by the Board on the basis that it was improperly or illegally obtained.
4. The Board may refuse to consider evidence if it is not relevant or material to the matters before the Board. If the Board determines that it will not consider any evidence or exhibit, the proponent must include it, or a summary of it, with its written objection in order to preserve any issue regarding that evidence for consideration by reviewing authorities.

B. *Documents*

1. All documents offered to or considered by the Board shall be included in the record as exhibits. The Board may require the proponent of a voluminous document to prepare an extract of the relevant parts of the document. The Board need only consider, and include in the record, the extracted material.
2. All documents offered as evidence may be presumed to be authentic (that is, that they are what they appear to be), unless their authenticity is challenged by the Respondent, Recorder, or the Board. If authenticity is challenged, a document may be authenticated by any appropriate means, including a signed statement by the proponent stating the source of the document (or of multiple documents).
3. If the correctness of the copy of a material document is disputed, the Board should seek to obtain the original or verify the contents of the original by other means (e.g. testimony of the custodian). Although original documents should be used and included in the record if available, copies of official documents showing the source from which they were obtained, a certification "certified to be a true copy," and signature of counsel, Recorder, or Respondent, may be accepted as evidence.
4. For specific guidance regarding records of misconduct, See Personnel Manual, COMDTINST M1000.6A, Article 12.B.1.d.

C. Witness Testimony

1. Generally. A witness, once sworn, should be informed of the nature of the inquiry unless it appears from the record that the witness has been previously so informed. The Board should protect every witness from improper questions, harsh or insulting treatment, and unnecessary inquiry into private affairs. To prevent collusion, coercion, or other influence on witnesses, the Board should direct witnesses to refrain from discussing their testimony or prospective testimony with other witnesses or any other person not having an official interest in the inquiry.
2. Order of Examination and Cross-Examination. Witnesses are usually examined in the following order: witnesses called by the Recorder; witnesses called by the Respondent; witnesses called by the Recorder in rebuttal; witnesses called by Respondent in rebuttal; and witnesses requested by the Board. The order of examining each witness is usually: direct examination (which may include adoption under oath of the witness's written statement), cross-examination, examination by the Board, and any requested redirect or re-cross examination.
3. Telephone Testimony. While in-person testimony is generally preferable to other methods because of the opportunity for the fact finder to observe the physical demeanor of the witness, examination of any witness by telephone or similar means is permissible.
4. Summary of Testimony. Witness testimony will be documented in the record either by a verbatim transcript or an accurate summary of relevant portions of the testimony. If the testimony is summarized, the Respondent, Recorder, and members should be provided an opportunity to propose appropriate changes to the draft document. If practicable, the witness shall certify the accuracy of the summary by signing a statement to that effect; otherwise the Senior Member shall certify that the document is an accurate summary of the witness's testimony.

D. *Witness Statements, Affidavits and Depositions*

1. Use of Affidavits or Other Witness Statements. Although testimony given under oath and subject to cross-examination is often more persuasive than a written statement, affidavits or other material evidence of a witnesses statements may be considered by the Board. Use of such statements is particularly appropriate:
 - a When a relevant matter is not in dispute.
 - b When the testimony is not readily obtainable; for example, where the present whereabouts of the witness are unknown, or where a witness is unable or refuses to testify in person or by telephone.
 - c When the person who made the statement testifies at the hearing or is available to testify on cross-examination. For example, witnesses may adopt under oath previously made statements.

- d When the Respondent offers the statement (e.g. character statements); and
- e When the Respondent does not object.

E. *Visiting Scene of Incident*

When practical, it may be desirable to visit the scene of an incident. Usually no testimony is taken at the scene, the sole purpose being to acquaint the Board with the physical characteristics of the scene. The Board should normally be accompanied to the scene by the Recorder, the Respondent and his or her counsel, and the reporter, but any party may waive attendance.

F. *Unsworn Statement of the Respondent*

Regardless of whether a Respondent has previously testified, a Respondent may make an unsworn statement to the Board after all witnesses have testified and before the closing arguments. The Respondent may not be cross-examined upon this unsworn statement. The Recorder may, however, introduce evidence to rebut any statements of fact in the statement. The statement may be oral or written, and may be made by the Respondent or Respondent's counsel, in a narrative or question and answer format. The statement should be factual, not argumentative, in nature, and the Board may accord an unsworn statement such weight as it deems appropriate.

Chapter 7 - DELIBERATIONS, REPORT, AND RECORD OF PROCEEDING**A. *Deliberations of the Board***

After all the evidence has been presented and statements and arguments have been received, the Board shall declare the hearing closed. The members will then consider the evidence, statements, and arguments. The instructions in the convening order shall be carefully reexamined and scrupulously followed. The Board shall promptly prepare written findings regarding, at a minimum, all matters listed in paragraph 1.C of this Manual (Scope of Inquiry), and the convening order. Because the Board's findings are subject to revision, the Board should provide its proposed findings only to the Respondent, Recorder, and the Convening Authority as detailed below.

B. *Report of the Board*

1. The Report of the Board shall consist of (a) a preliminary statement, which shall include a description of its determinations and actions regarding significant procedural issues; (b) list of witnesses testifying; and (c) the Board's findings.
2. The Board's findings shall consist of the following:
 - a. Findings of Fact. After deliberating on the evidence received at the hearing, the Board shall record the facts found regarding the matter investigated. The findings of fact shall include only those facts the evidence establishes, and nothing further. A fact need not be proved beyond a reasonable doubt to be listed as such; a preponderance of the evidence is adequate. Each finding of fact will clearly identify the supporting evidence in the record on which it is based.
 - b. Opinions. The Board shall list all of its opinions drawn from and supported by the facts. Depending upon the nature of the inquiry, opinions should include inferences drawn from the proven facts, opinions as to performance of duty by the Respondent, and other matters. Opinions should also be provided reflecting the Board's resolution of any conflicting material evidence. Each opinion will identify the findings of fact on which it is based.
 - c. Recommendations. The Board shall make recommendations regarding the matters specifically directed by the convening order and this Manual, and any others that, in its opinion, are appropriate and advisable in view of the nature of the facts found and opinions expressed. Each recommendation will identify the opinions or findings of fact on which it is based.
3. Disagreement Among Members and Minority Reports. The report of the Board shall reflect the opinion of the majority. If a member does not concur with the findings, opinions, or recommendations of a majority of the Board, that member should append a minority report to

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the record and state explicitly the parts of the majority report with which there is disagreement and the reasons therefor. The minority report may also include additional findings of fact, opinions, or recommendations.

C. *Assembling the Record of the Proceeding*

1. Generally. The Recorder compiles and prepares the record of the proceeding. Enclosure (6) of this Manual should be used as a guide in preparing a record of an ASB. The Record of the Proceeding will consist of the Report of the Board with the following enclosures:
 - a Verbatim transcript (if any)
 - b All exhibits
 - c Audio recording of the proceeding (if any)
 - d Any additional documents necessary to provide an accurate summary of the findings or proceedings. Any such documents should be discussed as necessary, in the preliminary statement of the report of the Board.
2. Verbatim Record. When the ASB was directed to submit a verbatim record of proceedings, in the discretion of the Board, routine proceedings of the Board may be described in the past tense as actions taken in lieu of the present tense recording of language actually used by participants.

D. *Authenticating the Record*

1. Prior to authentication, a draft of the record should be made available to the Respondent who shall be afforded at least three, and no more than seven, calendar days from receipt, to submit in writing proposed corrections to the record. The Respondent may authorize the draft record to be forwarded to counsel instead. Any written submission by the Respondent shall be appended to the record as an additional enclosure.
2. After the Respondent submits corrections or the time for the Respondent's review of the draft record elapses, and appropriate corrections have been made to the record, all concurring members shall sign the Report. This includes an officer who participated in only part of the proceedings (provided the officer participated at the time of the findings). Such limited participation shall be disclosed in the record of proceedings.

E. *Forwarding the Record*

1. The Senior Member of the Board shall forward the record of proceedings, together with the number of complete copies required by the Convening Authority, to the Convening Authority.

2. The Convening Authority or any reviewing authority may return the investigation to the Board for correction or further proceedings if it does not comply with the requirements of this Manual.
3. The Convening Authority shall review the report and provide a command endorsement. The endorsement shall include, at a minimum, a statement of concurrence or disagreement with the findings, opinions, and recommendations of the Board.
4. The Convening Authority shall then forward the original and one complete copy to Commander, Coast Guard Personnel Command (adm-2), along with any additional materials required by the Personnel Manual. The Convening Authority shall retain a complete copy of the report, with endorsement, until the member is separated or transferred to another unit.
5. Action By The Discharge Authority. See PERSONNEL MANUAL, COMDTINST M1000.6A, COMDTINST M1000.6(A) 12.B.31.e., Options of Discharge Authority. The record of the ASB, and action taken thereon, will be filed by Commander CGPC in accordance with applicable directives.

SAMPLE SEPARATION NOTICE

1910

(Date)

From: Commanding Officer (Unit)

To: (Individual concerned)

Subj: SEPARATION FROM THE COAST GUARD

Ref: (a) Personnel Manual, COMDTINST M1000.6 (series), Article 12-B

(b) Administrative Separation Board Manual, COMDTINST M1910.2

1. This is to inform you that I have initiated action to separate you from the U.S. Coast Guard pursuant to the provisions of reference (a).
2. The reasons for my action are: (State specific facts and incidents that are the basis for the recommendation. Include the dates and circumstances of contributory events, including, if applicable, nonjudicial punishment and courts-martial, together with evaluation of the member's potential for advancement and satisfactory completion of enlistment.)
3. The least favorable characterization of service that may be approved is (other than honorable) (general -separation under honorable conditions) (honorable). The decision to provide you with an honorable or general discharge rests solely with the Coast Guard's separation authority. If a general discharge is issued, you may be deprived of some rights and privileges available to honorably discharged veterans under federal or state law, and may encounter some prejudice in situations in which the characterization of service may have a bearing.
4. [If an OTH discharge is possible] A separation under other than honorable conditions can only be awarded if an administrative separation board recommends such a characterization, or if you waive your opportunity to appear before such a board. If a discharge under "other than honorable" conditions is issued, such a discharge may deprive you of many or all rights as a veteran under both Federal and State law; and you should expect to encounter substantial prejudice in situations in which characterization of service may have a bearing.
5. You have the following rights, as further detailed in references (a) and (b), which I encourage you to review.
 - a. You may submit a statement in your behalf. You may disagree with my recommendation. Any statement you provide will be forwarded to the separation authority with my recommendation for consideration.
 - b. If you so request, you may present your case before an administrative separation board, with the assistance of a military lawyer provided at government expense, or civilian counsel at no cost to the government. An administrative separation board consists of at least three officers, who make findings regarding the evidence and recommend appropriate action to the separation authority.

Enclosure (1) to COMDTINST M1910.2

- c. In deciding whether to request an administrative separation board, you are entitled to an opportunity to consult with a military lawyer at government expense. You may also consult with a civilian lawyer at your own expense.
6. You must acknowledge receipt of this notification and indicate whether you desire to consult with a military attorney at government expense by completing the endorsement below. I encourage you to exercise your right to consult with an attorney regarding this important matter.
7. You must submit any statement regarding your separation and any request for an administrative separation board within five working days using the attached form. If you decline to consult with military counsel, the five-day period will run from the date you received this notification. If you elect to consult with military counsel, we will arrange for a consultation appointment, and the five-day period will run from the date of that appointment. If you do not exercise these rights by completing the enclosed form and returning it to the Executive Officer within this five day period, or any extension granted by me within this five day period, you will forfeit any right to present your case to an administrative separation board.

/s/

Encl: (1) Exercise of Rights Form

ACKNOWLEDGMENT & ELECTION

I have read and understand the above notifications.

I understand that if the Separation Authority approves the recommendation for an administrative discharge, the Separation Authority will also determine and specify the type of discharge to be issued to me (honorable, general, or under other than honorable conditions).

I understand that if a general discharge (under honorable conditions) is issued to me, I may be deprived of some rights and privileges available to honorably discharged veterans under federal or state law, and I may encounter some prejudice in situations in which the characterization of service may have a bearing. I further understand that if a discharge under "other than honorable" conditions is issued to me, such discharge may deprive me of many or all my rights as a veteran under both Federal and State law; and that I may expect to encounter substantial prejudice in situations in which characterization of service may have a bearing.

(Circle one): I (request) (decline) an opportunity to consult with military counsel regarding my decision to request an administrative separation board.

Signature

Date

ADMINISTRATIVE SEPARATION: EXERCISE OF RIGHTS

From: _____ (Member)

To: Commanding Officer _____ (Unit)

Subj: Discharge

Ref: (a) Your ltr 1910 of _____ (date of notification ltr)
(b) COMDTINST M1910.2, ADMIN SEP BOARD MANUAL.

1. **Consultation with Counsel regarding reference (a)** *(Initial and complete one)*

_____ I **consulted** with _____ of _____, a

military lawyer, on _____.

Or

_____ I **waive** my right to consult with a military lawyer.

2. **Statement** *(Initial and complete one)* .

_____ I have **attached** to this form my _____ page statement regarding this discharge

Or

_____ I **waive** my right to submit a statement regarding this discharge

3. **Administrative Separation Board** *(Initial and complete one)*

_____ I **request** an administrative separation board.

Or

_____ I **waive unconditionally** my right to an administrative separation board.

Or

_____ I **waive** my right to an administrative separation board **on condition** that I receive an (honorable) (general or more favorable) characterization of service. I have read and understand the provisions of reference (b) concerning conditional waivers.

4. **Board membership:** *(If board is requested and member is female or a member of a minority group)*
Circle all that apply: In accordance with Art 3-B of reference (b), I (do)(do not) request that at least one member of the board be (female)(a minority group member)(both).

(Signature of member)

(Date)

SAMPLE CONVENING ORDER

U.S. Department
of Transportation

**United States
Coast Guard**



1910

From: [C-A]

To: [SEN NAME]

Subj: ADMINISTRATIVE SEPARATION BOARD; [RESP NAME]

Ref: (a) Administrative Separation Board Manual, COMDTINST M1910.2 (series)

(b) Personnel Manual, COMDTINST M1000.6A, Article 12.B. (12.B.9., 12.B.16., or 12.B.18.)

1. You are hereby designated senior member of an Administrative Separation Board convened under chapter 2 of reference (a). Other members of the Board are: [MEM NAME] [MEM NAME]
2. The Board is required to conduct a hearing. ([REC NAME] is designated non-voting recorder); or (The junior member shall act as recorder). Testimony of witnesses shall be under oath or affirmation. A (verbatim) (summarized) record shall be kept.
3. [RESP NAME] is designated as Respondent to this Board. You shall notify (him) (her) of the time and place of the hearing, and accord (him) (her) the rights of a party under Article 1.E. of reference (a).
4. The Board will be conducted in accordance with references (a) and (b). Board members should avoid discussing the case or reviewing evidence relating to this case prior to the hearing except as required by your duties.
5. The Board shall render findings based on the facts obtained, identify any reasons for separation supported by the evidence, recommend either retention in or separation from the Coast Guard, and recommend the appropriate characterization of service, as required by Article 1.C. of reference (a). (In addition, you shall make specific findings regarding the following issues): (FOR REENLISTMENT BOARDS: The Board will also render findings as to the respondent's eligibility for reenlistment, i.e., eligible for reenlistment: not eligible for reenlistment; or probationary extension of enlistment for any period as may be specified not to exceed one year.)
6. The Board should convene on [DATE], or as soon thereafter as practicable, at [LOCATION].

Enclosure (3) to COMDTINST M1910.2

7. If you are unable to complete this hearing by [DATE], you shall promptly report the reasons to me and include an explanation of the delay in the report of the proceedings of the board.
8. You shall submit the report of the board and record of the proceedings following the format required by reference (a). [NAME] shall furnish the necessary clerical assistance.

/s/
[C-A ONLY]

Copy: [RESPONDENT]
[MEMBERS]
[RECORDER]
[District (ap)(app)(dl) or MLC (p)(l)]
CGPC (epm)

ASB CHECKLIST

1. Once a command has determined that one of its enlisted members should be recommended for separation and is entitled to an administrative separation board, the command should:
 - ☐ Consult Chapter 12-B of the Personnel Manual, COMDTINST M1000.6A (PERSONNEL MANUAL, COMDTINST M1000.6A), to determine the correct basis for the proposed recommendation for discharge and the least favorable characterization of service that may be awarded. Contact CGPC (epm) if in doubt.
 - ☐ If the basis is one which requires an administrative discharge board, appoint a "project officer" to coordinate the entire evolution.
2. The project officer should:
 - ☐ Gather all of the information that forms the basis for the proposed recommendation to discharge, referring to the applicable sections of chapter 12-B, PERSONNEL MANUAL, COMDTINST M1000.6A.
 - ☐ Once all pertinent information has been gathered, contact the servicing cognizant legal office for advice on sufficiency of the evidence if necessary.
 - ☐ Draft a Separation Notification letter to the member for the command's signature (see enclosure). Ensure the letter complies with the minimum requirements of the particular situation.
 - ☐ If, upon receipt of the Discharge Notification letter, the member has and invokes a right to consult with a military attorney, contact MLC (1) to obtain counsel.
 - ☐ If the member decides to unconditionally waive the right to an administrative discharge board, or fails to request a board within the prescribed period, prepare documentation as for members who are not entitled to ASBs, and include notification and waiver in package.
 - ☐ If the member requests to conditionally waive the board, determine whether the CO will accept or deny conditional waiver under standards in PERSONNEL MANUAL, COMDTINST M1000.6A.
 - ☐ If the member invokes the right to appear before an administrative discharge board, call MLC (1) to have counsel detailed to represent the member (Respondent) and afford the Respondent an opportunity to consult with that counsel.
 - ☐ Determine tentative date and location for hearing. Coordinate with other local commands or cognizant (ap) or MLC (p) to obtain board members.

Enclosure (4) to COMDTINST M1910.2 [] Arrange for recorder.

- [] Prepare the convening order for the CO's signature (see Enclosure 3)
- [] Provide recorder with copies of all material relevant to the hearing available to the command, and coordinate logistical arrangements and funding with recorder (see enclosure 7).
- [] As the date of the board approaches, ensure that all logistical details, such as witness orders, a deliberation area for the board, the hearing room, and the contract for the court reporter are arranged.
- [] After the board's completed report has been received, prepare for the CO's signature the transmittal letter to CGPC (epm) via the chain of command in accordance with PERSONNEL MANUAL, COMDTINST M1000.6A. Make sufficient copies of the report of the board so that intermediate commands get a copy and CGPC (epm) gets the original and one copy.

SAMPLE LETTER TO RESPONDENT FROM SENIOR MEMBER

1910

From: [SENIOR MEMBER]
To: [RESPONDENT'S NAME]

Subj: SCHEDULING OF ADMINISTRATIVE SEPARATION BOARD
Ref: (a) Administrative Separation Board Manual,
COMDTINST M1910.2(series)
(b) Personnel Manual, COMDTINST M1000.6 (series) , Article 12-B

1. Per enclosure (1), I have been appointed Senior Member of the Administrative Separation Board that will consider your case.
2. The Board's proceedings will be conducted in accordance with references (a) and (b). Reference (a) governs the procedures of the Board and also details your rights as Respondent. Reference (b) provides Coast Guard policy regarding separations. I encourage you to become thoroughly familiar with both of these instructions, which should be available to you at your unit. Please contact me immediately if you need assistance in getting access to these instructions.
3. The Board's purpose is to gather evidence, both in your favor and adverse to you, as necessary for the separation authority to make sound decisions regarding whether to separate you from the Coast Guard, and if so, how to characterize your service. I understand that you have chosen to (represent yourself at the board) (be represented at the board by _____). Note that you, or your representative, must assert your rights in a timely manner. If you believe that the Board or any person involved is not properly observing your rights or is otherwise not acting in accordance with Coast Guard policy, you should notify me, or _____, the Convening Authority, immediately so that the situation can be corrected. If you are not satisfied with the response, you should put any objection in writing and submit it as an exhibit to the Board so that the Board can consider it and include it as part of the record.
4. To ensure that the hearing goes smoothly, I hereby direct the Recorder and the Respondent to disclose the matter indicated in enclosure (1) in writing by the specified dates. Contact me immediately if a revision to this schedule appears necessary. Failure to comply with this schedule by either Recorder or Respondent may delay the hearing or may preclude the introduction of desired evidence at the hearing.

/s/

Encl: (1) Convening Order
(2) Disclosure Schedule
(3) Privacy Act Statement

Copy: [Recorder]
[Convening Authority]

**DISCLOSURE SCHEDULE FOR
ADMINISTRATIVE DISCHARGE BOARD**

Date of Hearing: _____

DISCLOSURES BY RECORDER

At least 10 working days before the hearing the Recorder will provide to the Respondent the following (sensitive materials may be made available for Respondent and counsel's review in lieu of providing copies):

_____ A list of any reasons for discharge from PERSONNEL MANUAL, COMDTINST M1000.6A Chapter 12 that the Recorder believes are merited by the evidence and should be considered by the Board provisions).

_____ A summary of the following information derived from the member's official personnel and health records:

- a. Summary of military offenses, if any
- b. All other disciplinary action during current enlistment. Include service record entry page number, date of nonjudicial punishment or court-martial by type, description of offenses, nonjudicial punishment or sentence as approved and approval date.
- c. Personality disorders. Personality disorders are listed in the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.
- d. Civil convictions, if any, on the basis of information contained in the service record or otherwise readily available. List date and court in which convicted, offense, and sentence awarded.
- e. A copy of any closed out form CG-3306 in the service record, and a copy of the current form CG-3306 showing factor marks.

- _____ Any documents that the Recorder expects to present as evidence at the hearing, such as witness statements, documents from the Respondent's personnel records including personnel data, health, and pay records such as psychiatric or medical evaluations (especially in aberrant sexual behavior cases), records of criminal convictions.
- _____ Copies of other documents the Recorder expects to present at the hearing and not already provided to the Respondent, including extracts of pertinent Coast Guard instructions.
- _____ A list of witnesses the Recorder intends to call, the address and daytime phone number of each witness, the manner in which the witness will testify, (in person, by telephone, etc.) and a brief summary of the expected testimony.

DISCLOSURES BY RESPONDENT

At least 7 working days prior to the hearing the Respondent will provide to the Senior Member any requests for witnesses to be provided at government expense.

At least 5 working days prior to the hearing the Respondent will provide to the Recorder the following:

- _____ List of all witnesses expected to be called by Respondent with contact addresses and telephone numbers and a brief statement of expected testimony and the means by which they will testify (e.g. in person, by telephone)
- _____ Copies of any requests for witnesses to be provided at government expense in person, by telephone)
- _____ Copies of any documents to be presented at the hearing by Respondent

Recorder and Respondent shall notify the other of any substantial changes regarding these matters as promptly as practicable.

Do not provide copies of this material (except witness requests) to me unless I request it. You should, however, maintain copies of any material provided, and records of the dates provided to one another, in case issues arise.

Enclosure (5) to COMDTINST M1910.2

**PRIVACY ACT STATEMENT FOR THE SUBJECT
OF AN ADMINISTRATIVE SEPARATION BOARD**

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 1169; 44 U.S.C. 3101;
49 CFR 1.45(a)(1); Art. 12-B, COMDTINST M1000.6(series), COMDTINST M1910.2
(series)

PURPOSE: The information that will be solicited is intended principally to enable the Coast Guard to determine the desirability of retaining you in service and the characterization of your service. In the course of the investigation information also may be solicited that could give rise to a determination concerning disciplinary or punitive action.

ROUTINE USES: The information will be maintained as part of the Enlisted Personnel Record System, DOT/CG 629, which is maintained for use in formulating all Coast Guard personnel actions including, but not limited to, assignment, promotion, reenlistment, retirement, discharge, determination of entitlement to pay allowances, correction of records, and disciplinary actions. Data is also provided to the Veterans Administration for determination of an individual's eligibility for benefits administered by that agency and to medical facilities maintained by the Department of Health, Education and Welfare in conjunction with medical treatment afforded an individual.

See also DOT Prefatory Statement of General Routine Uses: 3 through 5 do not apply.

DISCLOSURE IS VOLUNTARY: You are advised that the final determination will be based on all the evidence in the investigative record. Your election not to provide the requested information possibly could prevent the investigation from obtaining evidence that may be needed to support a determination in your favor, and thus result in a determination adverse to you.

SAMPLE SUMMARIZED RECORD

NOTE: Reviewing authorities consider the summarized record when determining whether the proceedings of the Board met all the requirements imposed by Coast Guard regulations and federal law. The summarized record prepared by the Board should provide sufficient procedural details to allow a reviewer to ascertain whether the Board afforded the Respondent due process of law. Moreover, the summarized record should list the testimony and evidence presented, objections raised, and arguments asserted so that reviewing authorities may assess independently the reasonableness of the Board's findings, opinions, and recommendations.

1910

(Date)

From: Senior Board Member

To: Convening Authority

Subj: SUMMARIZED RECORD OF ADMINISTRATIVE SEPARATION BOARD FOR
RESPONDENT 'S NAME, USCG

Ref: (a) Personnel Manual, COMDTINST M1000.6 (series), Article 12-B
(b) Administrative Separation Board Manual, COMDTINST M1910.2

1. On February 5, 1999, Commanding Officer, USCGC UNDERWAY (WMEC 1) ordered an administrative discharge board to convene in accordance with references (a) and (b). The Convening Authority directed the Board to render findings based on the facts obtained and recommend either retention in or discharge from the Coast Guard of Respondent's Name, USCG. If the Board recommended discharge, then it was to indicate the reason for and type of separation or discharge certificate. On December 7, 1998, the UNDERWAY command notified Respondent that it had initiated action to discharge him for reason of homosexual conduct, and advised him of his rights with respect to an administrative discharge. The Board held a hearing on February 23-24 1999 at Coast Guard Integrated Support Command, Alameda, CA. Law Specialist's Name, USCG, a lawyer qualified under Article 27(b), of the Uniform Code of Military Justice represented him throughout the proceedings. The servicing legal officer qualified Recorder's Name, USCGR, who is [or is not] a lawyer qualified under Article 27(b), UCMJ, to serve as Recorder for the Board.

2. The Board convened at 0900 on February 23, 1999. The Board consisted of Name & Rank of Board Members as named in the Convening Order. The Senior Board Member advised and accorded to Respondent all rights to which he was entitled as an administrative discharge board respondent in accordance with reference (b) Article 1-E. Respondent stated that he understood these rights and procedures. The Board provided both the Recorder and Respondent an opportunity to challenge members of the Board. Neither party elected to challenge any member. ***[Discuss any challenges and the outcome.]***

Enclosure (6) to COMDTINST M1910.2

3. The Recorder called the following witnesses to testify before the Board:

- a. *Witness Name, Unit, relation to Respondent, Summary of testimony at enclosure(s)_____.*
- b. *Repeat for each witness.*

4. The Recorder offered the following exhibits into evidence:

- a. *Describe briefly each exhibit, and the weight (if any) given by the Board. Note any objections and rulings by the Board. Provide numbers of related exhibits.*

5. The Respondent called the following witnesses to testify before the Board:

- a. *Repeat the same process described above in paragraph 3.*

6. The Respondent offered the following exhibits into evidence:

- a. *Repeat the same process described above in paragraph 4.*

7. *Summarize the Respondent's oral unsworn statement (if any) and the Respondent's answers to any questions from the Board.*

8. ***Case Specific Requirements.*** *Certain types of administrative separations require the Board to articulate its consideration of specific issues. Participants should check the Personnel Manual to ensure that the Board considers, and where appropriate makes findings, regarding these issues. We provide two examples:*

A. *(Homosexuality)* On April 29, 1999, the Board submitted its written findings and opinions in support of its conclusion that *Respondent* had engaged in homosexual conduct with *[name]*. The Board concluded further that:

- (1) *Respondent* committed homosexual acts as part of his usual, customary behavior as evidenced both by his year-long relationship with *name* and *any other pertinent evidence*;
- (2) Such conduct was likely to recur because there was evidence that Respondent engaged in homosexual conduct with *[name]* during the pendency of this investigation;
- (3) Such acts were not accomplished by using force, coercion, or intimidation;
- (4) Under the particular circumstances of this case, Respondent's continued presence in the Coast Guard is not consistent with the Coast Guard's interests in proper discipline, good order, and morale because ***[reasons, e.g., he persisted in prohibited conduct despite his awareness that he was under investigation and contrary to his unsworn assertions that he would not continue engaging in such acts];*** AND
- (5) *Respondent* has a propensity to engage in homosexual acts as indicated by the testimony of *name of witness*.

B. *(Drug Incident Involving a Positive Urinalysis)* On April 29, 1999, the Board submitted its written findings and opinions in support of its determination by a preponderance of the evidence that a drug incident occurred involving the *Respondent*. The Board concluded further that:

- (1) the urinalysis *was/was not* conducted in accordance with Chapter 20 of reference (a) *[if not, then discuss evidence of procedural defects]*
- (2) the urinalysis collection and chain of custody procedures *were/were not* conducted in accordance with the Urinalysis Drug Testing Procedures, COMDTINST 5355.1 (series) *[if not, then discuss evidence of procedural defects]*
- (3) *then discuss evidence of procedural defects]*

/s/ SENIOR MEMBER

/s/ BOARD MEMBER

/s/ BOARD MEMBER

Encl: (1) Findings of Fact, Opinions, and Recommendations of the Board

(2) Exhibit Package

ADVICE TO RECORDERS BEFORE ADMINISTRATIVE SEPARATION BOARDS

The following guidance does not reflect Coast Guard policy, but is a work aid, adapted from materials that have been used by Coast Guard legal offices to enhance Recorders' effectiveness in learning and carrying out their duties - particularly where the Respondent is represented by experienced counsel. Respondents may also wish to review and use this material in preparation for the hearing.

1. INTRODUCTION

- a. The Recorder's duties are described in this Manual. You must be thoroughly familiar with this instruction, as well as with other applicable sections of the Personnel Manual and other directives.
- b. The responsibility of the Recorder is essentially that of an investigating officer, coordinator, and objective presenter of evidence. The Recorder is responsible for assisting the board in properly conducting the hearing in a timely manner, and for ensuring that the record of the proceeding provides Coast Guard separation authorities with the information they need to make appropriate separation decisions. The Recorder's duties include clerical and preliminary preparation, as well as presenting to the board in an impartial manner all relevant information concerning the respondent. The Recorder's presentation before the board generally consists of an opening statement, presentation of exhibits, questioning of witnesses, and a closing statement. The Recorder must assist the Board in properly determining all facts relevant to the separation decisions, and in properly applying policy to those facts to arrive at recommendations that are consistent with Coast Guard policy and in the best interests of the Coast Guard.
- c. If the Respondent is represented by military or civilian counsel, you should work through that counsel, rather than communicating directly with the Respondent. Recognize that Respondent's counsel is primarily concerned with protecting the interests of the Respondent, which may or may not be consistent with the Coast Guard's interests. Counsel, or Respondent, may be cooperative with your efforts to ensure a smooth, effective hearing, or may tend to complicate or obstruct the process. In addition, Respondent's counsel, in advocating on Respondent's behalf, may tend to confuse the board regarding the evidence or its duties. Your servicing legal office can assist you in dealing with difficult counsel.
- d. The Recorder must ensure that the Board stays "on task" by focusing the presentation of evidence, questioning of witnesses, and argument on relevant issues, providing proposed findings that are well-supported and useful to decision makers, and providing well-reasoned analysis and proper recommendations during the hearing.
- e. **CALL FOR ASSISTANCE IF YOU NEED IT; IT IS BETTER TO ASK FOR HELP BEFORE THE BOARD THAN TO HAVE TO EXPLAIN PROBLEMS AND UNEXPECTED RESULTS AFTERWARDS TO THE CONVENING AUTHORITY, OR RE-DO THE PROCESS. CONTACT THE CONVENING AUTHORITY'S SERVICING PERSONNEL OFFICE OR LEGAL OFFICE FOR ASSISTANCE AS SOON AS THE NEED FOR ASSISTANCE BECOMES APPARENT.**

2. PRINCIPAL REFERENCES

Coast Guard Personnel Manual, COMDTINST M1000.6A, Chapter 12 and 20 Administrative Separation Board Manual COMDTINST M1910.2 (series) Manual for Courts-Martial

3. ENSURE THAT THE FOLLOWING DOCUMENTS HAVE BEEN PREPARED BEFORE THE BOARD

- a. Notification: Letter from the Commanding Officer advising respondent of the separation action, including the authority under which discharge is being sought. The letter should NOT include the type of discharge being sought. This is for the Board members to recommend and for Commandant to decide.
- b. Convening Order: Letter from the Commanding Officer to the president of the Board, appointing all the members of the board and summarizing the Board's duties. The Respondent should receive a copy of this letter.
- c. Letter from the Senior Member: notifying Respondent of his/her rights, time and location of the hearing, and enclosing a copy of the Privacy Act notification to be returned to the Senior Member.
- d. Detailing Letter for Respondent's Counsel (if military counsel was requested). Respondent should receive a copy.

4. PREPARATION BY THE RECORDER BEFORE THE BOARD

The following is not an exhaustive checklist on how to prepare for an administrative separation board (ASB). If you do the following, however, you will find yourself better prepared for an ASB.

- a. Thoroughly familiarize yourself with the ASB Manual, which provides procedural and substantive guidance for Coast Guard ASBs.
- b. Familiarize yourself generally with the case. Talk to the Respondent's executive officer or the project officer to obtain any documents already produced regarding the matters at issue. You may discuss the matter with the Convening Authority, but you should never purport to speak on behalf of the Convening Authority or refer to statements he or she made to you outside of the hearing.
- c. Read the applicable Coast Guard Personnel Manual sections and ensure your case meets all the requirements for the basis and type of discharge sought by the Convening Authority.
- d. Thoroughly review the Respondent's personnel records, in particular the Respondent's performance evaluations and administrative remarks entries. Obtain and review a blue-ribbon copy of the respondent's service record (PDR) from headquarters.

- e. Look for entries regarding Respondent's watch-standing duties, rating knowledge, outside activities (positive & negative), self-improvement issues, community relations, and social interaction.
- f. Gather, review, and organize any evidence, medical records, police records, personnel records, etc. as may be required given the facts of the case.
- g. Copy and organize all documents you want to submit as exhibits. Copy any sections of instructions you deem relevant (such as the Personnel Manual, COMDTINST M1000.6A policies on drug and alcohol incidents). Prepare to meet any objections by your opponent to your exhibits (see section VII).
- h. Work with Respondent or counsel to make the hearing go smoothly. There should be no surprises on either side. Provide Respondent or counsel all evidence to be presented, witness lists, etc. as far in advance of the hearing as practical (and definitely within the time period specified by the Senior Member) and request that Respondent provide you with the same. If an exhibit is sensitive (e.g. Privacy Act material not otherwise available to the Respondent) you must make it available for review, but should not provide copies to the Respondent or Counsel. Help Respondent and Counsel arrange for local witnesses and obtain available evidence as necessary (e.g. by helping coordinate with local commands), unless it clearly appears that the requests are for irrelevant or unreasonably cumulative material.
- i. Interview Respondent's chain of supervisors, peers, and any witnesses on the merits of the case (e.g., addressing the question of whether a basis for separation is established, assuming the basis is going to be contested), and all the witnesses expected to be called by the Respondent before the ADB. Take good notes during the interview of your witnesses and your opponent's witnesses. If you have time, have the witnesses provide you a written statement before the ADB. It is more persuasive, in most cases, to call available witnesses to testify rather than just introducing a witness statement.
- j. As you interview witnesses who will testify on questions relating to whether to separate and with what characterization, remember to question them on the Respondent's performance, military character, rehabilitative potential, reliability, initiative, trustworthiness, on the Respondent's knowledge of his / her rate, on the Respondent's shipboard / rate qualifications, on the Respondent's advancement or leadership potential, the effect of the Respondent's retention on morale within the unit, and on the Respondent's attitude toward the Coast Guard.
- k. Review your opponent's exhibits prior to the board's commencement and prepare to make any appropriate objections to his / her exhibits.
- l. Prepare your opening statement, your closing argument, questions for voir dire, and direct/cross-examinations of witnesses in advance. Prepare your closing argument and proposed findings for the Board early, to help identify any weaknesses or issues in the evidence and guide your other preparations. Note: if the junior member of the board serves as Recorder, he/she may not make a closing argument.

- m. Arrange your evidence in a logical order to "tell the story." Arrange exhibits in the order that they will be used. Copy a package of exhibits for each member and have an administrative board guide prepared for each member. Do not provide the exhibits ahead of time, however.
- n. If a reporter is assigned, contact the reporter early to ensure that any required arrangements have been made, and that the recorder knows what is expected. Have working tape recorder set up to record proceedings to assist in completion of the summarized transcript afterwards, unless the recording of the proceedings is specifically prohibited by the Convening Authority (do not prepare a verbatim transcript unless the convening order so directs).
- o. Set the room up for the Board, and ensure that the Board has sufficient room for all parties, can accommodate witnesses, has a working speakerphone set-up to take remote testimony, and that water pitchers and glasses are available. The Senior Member of the Board has the authority to decide if coffee, soda or the like may also be brought into the proceedings.

5. **VOIR DIRE**

- a. Goal - unbiased members who will make impartial decisions. The members are not necessarily disqualified if they know the Respondent or are aware of the circumstances surrounding the case, if they can still make an impartial decision based only on the evidence at the hearing.
- b. The Recorder should ask follow-up questions to ensure that the Convening Authority has all of the relevant facts necessary to determine whether to replace the member.
- c. If Respondent submits a challenge to a member, you should provide any additional information necessary for an appropriate decision to the convening authority (with a copy to the record and respondent).

6. **OPENING STATEMENTS**

- a. Yours - the road map for the proceeding. Always take the opportunity to set the scene through an opening statement.
- b. Describe the Board's functions and duties - must make at least 3 determinations or recommendations:
 - (1) Is the basis for separation established
 - (2) Should member be separated or retained
 - (3) If separated, should the discharge be characterized as Honorable, General, or Other Than Honorable?
- c. Any other specific determinations required by the Convening Authority.
- d. Why this Board is convened - describe the Respondent's history relating to the basis for separation. Describe the standards to be applied - especially the preponderance of the evidence standard for fact-finding and the best interests of the Coast Guard standard for the separation decision.
- e. Tell the Board what you believe they should conclude e.g. that:

- (1) Evidence will support misconduct findings;
 - (2) Evidence will support separation from the Coast Guard;
 - (3) Evidence will warrant a General discharge.
- f. Give a brief summary of the evidence you'll present.
- g. During the defense's opening statement listen to their theory of the case to prepare for rebuttal and counter argument as necessary with your evidence.

7. PRESENTING YOUR EXHIBITS

- a. Briefly go through your exhibits with the Board by stating the exhibit number and the identity of the exhibit. Don't argue the exhibit at this point.
- b. If you have numerous exhibits, request a break to enable members to review them before calling your witnesses.
- c. Be familiar with your exhibits
- d. Tell them if an exhibit is only offered for a limited purpose.
- e. Attachment (1), an Administrative Board Recorder's Log, can be used to help keep track of exhibits, and other pertinent information during the proceeding.
- f. Be sure to include the following exhibits, in order, as applicable
 - (1) Convening Order and any amendments
 - (2) Separation Notification Letter
 - (3) Respondent's elections of Rights
 - (4) Letter detailing military counsel
 - (5) Correspondence between Senior Member and Respondent
 - (6) Extracts of relevant instructions and policy documents, including PESMAN
 - (7) Relevant records from PDR, health record, etc.
 - (8) Records of criminal convictions

8. HANDLING OBJECTIONS

Respondent must object to protect rights at an ASB, and may object to other procedural violations. Remember though- the rules of evidence do not apply. Generally, the only valid objections to evidence are that it is unreliable, unnecessarily cumulative (repetitive) with similar evidence, privileged (rules of privilege under the military rules of evidence do apply to ASBs) or that it is irrelevant. When in doubt, such objections should be referred to the Legal Advisor to the Board.

- a. "Irrelevant" - be prepared to explain why the exhibit is helpful to the Board in making one of its decisions.
- b. "Reliability/authenticity" is another proper objection. Ensure that everything offered is a legitimate copy of a proper record.

Enclosure (7) to COMDTINST M1910.2

- c. "Cumulative" is a proper objection to evidence that is repetitive. Be prepared to show why each exhibit is necessary - e.g. significant different perspectives or times of observation. Avoid this situation anyway, because the board members will get annoyed.
- d. "Privileged." This is a proper objection, if the evidence is subject to one of the privileges in the Manual for Courts-Martial, Part III Military Rules of Evidence, Section V (Privileges), such as lawyer-client, clergy, etc. Be prepared to assert privileges on behalf of the government to protect classified information and other sensitive information. Contact the servicing legal office ahead of time if you anticipate issues in this area.
- e. "No article 31(b) rights given." Article 31(b) (UCMJ) rights warnings are given at administrative separation boards before questioning persons suspected of an offense about that offense. When in doubt, it's best to warn. But no objection on this basis can be raised to the admission of a statement that was taken without according the person who made the statement article 31 rights, because the rules of evidence do not apply.
- f. "Prejudicial" - Not a valid basis for objection at an ASB - all relevant evidence should be considered, though only for those matters for which it is relevant. (Even in court, most evidence presented by the government is "prejudicial" to an accused - a judge will admit the evidence unless its tendency to unfairly prejudices the accused because of the likelihood that it will be used for an improper purpose).
- g. "Competence-for-duty urinalysis" - although it cannot be used to characterize adversely, it can be used on the separation / retention question.

9. **WITNESSES**

- a. Interview all witnesses before hand. If the Respondent presents a "surprise" witness, request a recess to interview the witness privately - this will save time at the hearing by avoiding irrelevant lines of questioning and reduce the unnecessary costs to compiling the record.
- b. Use them, but don't over kill. For non-controversial matters, written statements are sufficient, and a much more efficient means of establishing facts.
- c. If witnesses cannot testify in person, arrange for telephone (or similar) testimony. See attachments (2) and (3) for further guidance on direct and cross-examination of witnesses.
- d. Key witnesses should be called, if available, regarding significant acts or effects of conduct, and other disputed factual issues.
- e. Stress witness quality over quantity. You should call the best witnesses on any issue before the Board - witnesses that are in the best position to observe and professionally evaluate respondent and most free of personal biases. A few key witnesses (e.g. supervisors, peers) should be called on other performance issues. Bring out relevant favorable as well as unfavorable testimony. Bring out prior counseling sessions, and explore the reasons behind opinions. Get solid, first-hand information about the case and the Respondent.
- f. Be ready to call other witnesses if they provide a credible alternative view to that presented by the Respondent.

- g. Introduce your witnesses by establishing the relationship, or the degree of familiarity, between Respondent and witness to demonstrate that the witness has enough knowledge to be able to contribute useful information to the Board (avoid anyone with personal bias)
- h. Cross-examination should be used to tell the members the "rest of the story," primarily how much they should rely on this witness's testimony. Don't cross-examine unless you have a reason for doing so. Elicit any testimony favorable to your case before attacking the witness's credibility. Credibility may be attacked by showing that the witness was biased or was limited in his opportunity to observe relevant matters.

10. CLOSING ARGUMENT

- a. Submit proposed findings (make electronic format available for Board's use) and refer to them in your closing
- b. Focus on fundamentals - the evidence and the issues before the Board.
- c. Summarize relevant evidence and testimony
- d. Point out applicable rules, guidelines
- e. Reach conclusion based on the evidence and guidelines
- f. If appropriate, remind members of preponderance of the evidence standard and their authority to call or recall witnesses at any time -even after closing arguments if necessary.
- g. Be reasonable and objective.

11. COUNTERING POPULAR DEFENSE STRATEGIES

- a. *Command failure; not enough assistance or guidance; member needs help.* Stress personal responsibility and expectations from a member in the Respondent's position - core values focus on whether retention of this member is in the best interests of the Coast Guard -Coast Guard is not a charity. You may need to request break to obtain rebuttal witnesses.
- b. *Mistake, or isolated instance of poor judgment.* Stress need for reliability, - personal perspective of Respondent is not controlling - one instance of significant poor judgement, or a consequential mistake, may be a good reason to fire someone, particularly if it impacts mission performance, safety, or good order and discipline -even if it was merely neglectful rather than intentional.
- c. *Sympathy for family; Long period of (mostly) dedicated service has earned Respondent a "right" to retire or honorable discharge.* No one should be retained unless it's in the Coast Guard's best interest. Not a reason to retain dead weight or counterproductive employees. Right to retire requires at least 20 years of service - This should not be a surprise to Respondent. Providing for family is the Respondent's obligation, not the Coast Guard's or the taxpayers. Respondent should have considered his family when he was doing acts that lead to this board. Need to protect the meaning of an honorable discharge and to accurately reflect service.

12. MISCELLANEOUS

- a. Don't assume anything - offer some proof on every relevant fact.
- b. Ensure all the pertinent information gets before the members and into the record.
- c. Be objective, realistic and reasonable. Focus on the demonstrated behavior and performance rather than the person.
- d. Don't testify yourself, and avoid calling the XO or CO if possible.

13. POST BOARD

- a. The Senior Member generally tasks the Recorder with the responsibility of preparing the written record of the Board. Review the ASB Manual for formats. Assist the Board as requested in preparing the written report of the Board's findings. Monitor progress of the summarized or verbatim record. Ensure that the report is properly signed and that the record is properly authenticated.
- b. The Convening Authority will forward the package with the command endorsement via the chain of command to the Coast Guard Personnel Command.

ATTACHMENTS: end_ub|

Attachment (1): ADMINISTRATIVE BOARD RECORDER'S LOG

Attachment (2): DIRECT EXAMINATION OF WITNESSES

Attachment (3): CROSS-EXAMINATION OF WITNESSES

**Attachment (4): SOME QUESTIONS TO ELICIT OPINIONS ON RESPONDENT'S
PERFORMANCE, MILITARY CHARACTER, & REHABILITATIVE
POTENTIAL**

ADMINISTRATIVE BOARD RECORDER'S LOG

Respondent: _____

Place: _____

Persons Present: _____

RECESSES

TIME	TIME	REMARKS
Start_____	Stop_____	_____
Start_____	Stop_____	_____
Start_____	Stop_____	_____
Start_____	Stop_____	_____

Attachment (1) to Enclosure (7) to COMDTINST M1910.2

GOVERNMENT EXHIBITS

1 _____	11 _____	21 _____
2 _____	12 _____	22 _____
3 _____	13 _____	23 _____
4 _____	14 _____	24 _____
5 _____	15 _____	25 _____
6 _____	16 _____	26 _____
7 _____	17 _____	27 _____
8 _____	18 _____	28 _____
9 _____	19 _____	29 _____
10 _____	20 _____	30 _____

RESPONDENT EXHIBITS

A _____	H _____	O _____
B _____	I _____	P _____
C _____	J _____	Q _____
D _____	K _____	R _____
E _____	L _____	S _____
F _____	M _____	T _____
G _____	N _____	U _____

Attachment (1) to Enclosure (7) to COMDTINST M1910.2

WITNESSES

Name

Called By

Spoke On

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Attachment (2) to Enclosure (7) to COMDTINST M1910.2

DIRECT EXAMINATION OF WITNESSES

1. DETERMINE YOUR GOAL OR PURPOSE
2. PREPARATION - KEY TO SUCCESS
 - a. Review pertinent records
 - b. Interview witnesses
 - c. Review all prior statements
 - d. Outline your areas of questioning
 - (1) Identify and qualify your witness (explain the basis for knowing relevant information)
 - (2) Set the scene - chronological order
 - (3) Use real evidence if you have it -The knife, the marijuana baggie, etc.
 - e. Anticipate objections
 - f. Prepare a good wrap up
3. CONDUCT YOUR DIRECT EXAMINATION
 - a. Elicit testimony showing why the Board should rely upon this witness
 - b. Avoid leading questions - have the witness talk (who, what, where, when, why, and how)
 - c. Use plain language
 - d. Ask short simple questions
 - e. Link the witness to exhibits
 - f. Listen to your witness and respond
 - g. Appear interested
 - h. (If possible) demonstrate testimony
 - i. End strong
4. DEVELOP TECHNIQUES TO EMPHASIZE MAIN POINTS
 - a. Pace or tone
 - b. Pauses
 - c. Movements
5. PROJECT CONFIDENCE

CROSS EXAMINATION OF WITNESSES

1. DETERMINE YOUR GOAL OR PURPOSE. Generally - 2 purposes:
 - a. Clarify Testimony
 - (1) What is the rest of the story
 - (2) What is the basis of statements
 - b. Expose weaknesses of witness or testimony
 - (1) Expose credibility problems - is this witness reliable? perception, bias, prejudice, motive to fabricate
 - (2) Expose any untruths
 - (3) Other credibility problems (history of false statements, etc.)
2. SCOPE OF CROSS-EXAMINATION
 - a. Matters brought out by respondent's counsel during direct examination, and any other matters beyond direct as long as relevant
 - b. Matters affecting credibility
3. PREPARATION - KEY TO SUCCESS
 - a. Review case file
 - b. Interview witnesses
 - c. Review all prior statements
 - d. Draft specific questions
4. CONDUCTING YOUR CROSS EXAMINATION
 - a. Start strong and end strong
 - b. Exude confidence
 - c. Be in control
 - d. Ask leading questions as necessary
 - e. Don't be argumentative
 - f. Short questions are best
 - g. Ask for facts not conclusions
 - h. Be persistent and require an answer
 - i. Don't repeat direct examination
 - j. Stop when you have made your point.

SOME QUESTIONS TO ELICIT OPINIONS ON RESPONDENT'S PERFORMANCE,
MILITARY CHARACTER, & REHABILITATIVE POTENTIAL

1. Identify Witness
 - a. Please state your name, rank, unit, and armed force.
 - b. [Ask background questions: How long have you been in the Coast Guard? What were your prior duty stations? Prior billets?, etc.] What position do you fill in that unit? How long have you worked there?
2. Basis for personal knowledge of relevant info
 - a. Do you know _____, the respondent?
 - b. If you see him / her in the room today, would you please point to him / her?
 - c. How long have you known?
 - d. How do you know him / her?
 - e. How well do you know him / her?
 - f. During the time that you served with, what were his / her duty assignments?
 - g. To what extent, if any, did you observe the performance of his / her military duties?
 - h. During the time that you knew him / her, to what extent have you observed his / her conduct in the military community?
 - i. In an average week, how many days of the week would you have personal contact with?
 - j. How many hours of the day would you have such personal contact?
3. Relevant testimony
 - a. As a result of your contacts and observations of the Respondent, do you have an opinion of his work performance?
 - (a) What is that opinion?
 - (b) Why do you think that?
 - b. As a result of your contacts with _____, have you observed his / her attitude toward the military and his / her responsibilities in the military? To what extent?
 - c. Have you observed his / her attitude with respect to his / her military superiors?
 - d. d. As a result of your knowledge of and your contacts with, do you have an opinion of his / her military character? What is that opinion?

ADMINISTRATIVE SEPARATION BOARD GUIDE

OPENING THE BOARD

SEN: The board will come to order. Please be seated. The record will show that the board was called to order at [TIME] on [DATE] and is being held at [PLACE].

REC: This board is convened by order of the (Commanding Officer) (Commander) ____, dated ____, (as amended by ____) copies of which have been furnished to the members of the board, the respondent, and the Counsel for the Respondent.

REC: This board is convened for the purpose of considering pertinent facts in the case of [RESP NAME], who is being considered for (eligibility for reenlistment in) (an administrative separation from) (reduction for incompetency in) the U.S. Coast Guard by reason of:[GENERAL GROUNDS] (due to) [SPECIFIC GROUNDS].

REC: The respondent, [RESP NAME] and the following persons named in the convening order (as amended) are present:

Senior Member: [SEN NAME]

Member: [MEM NAME]

Member: [MEM NAME]

(Government Counsel and) Recorder: [REC NAME]

Counsel for the Respondent: [R-C NAME]

REC: No person named in the convening order is absent. (The following person(s) named in the convening order (is) (are) absent, having been excused by the convening authority: ____.)

Enclosure (8) to COMDTINST M1910.2

REC: I have been detailed to the board as (non-voting) recorder to the board. (I am (not) a law specialist qualified under Article 27(b), UCMJ).

ADMINISTERING THE OATH

NOTE: If a RPTR and/or INT are detailed to the board, they must make the following oath or affirmation. If it is known in advance that the RPTR or INT will "affirm" rather than "swear," the words "swear" and "so help you God" should be omitted from the oath. If no one is so detailed, skip to RESPONDENT'S RIGHTS.

REC: [RPTR NAME] has been named reporter to this proceeding and will now be sworn.

REC: Do you (swear) (affirm) that you will faithfully perform the duties of reporter to this board (so help you God)?

RPTR: I do.

REC: [INT NAME] has been named interpreter to this proceeding and will now be sworn.

REC: Do you (swear) (affirm) that you will faithfully perform the duties of interpreter to this board (so help you God)?

INT: I do.

RESPONDENT'S RIGHTS

SEN: [RESP NAME] in my letter to you notifying you of the time and place of this board, I also advised you of your rights at the board and of the procedures of the board by providing a copy of the Coast Guard Administrative Separation Board Manual. That letter, with the attached Privacy Act statement, will be made an exhibit. Do you understand your rights? Do you waive reading these rights and procedures into the record?

RESP: (Yes.) (No.)

NOTE: If the RESP does not waive the reading, or the information was not previously given the RESP, then read the rights and procedures into the record. (See Article I-E of the Administrative Separation Board Manual.)

SEN: [RESP NAME], do you understand your rights and the procedures before this board?

RESP: (Yes.) (No.)

SEN: I remind you that in order to protect these rights, you (or your counsel) must object promptly, so that we may correct any errors without unduly disrupting the proceedings. You may also object to other procedural matters. If you are dissatisfied with the Board's action on your objection, you must state your objection in writing and submit it as an exhibit for it to be considered by anyone reviewing this procedure. By whom will the respondent be represented?

R-C: (The respondent will be represented by [R-C NAME] who is (not) qualified under Article 27(b), UCMJ) or (The respondent is represented by civilian counsel). *NOTE: If the RESP does not want a R-C or if the RESP wants non-qualified R-C within the meaning of Article 27(b), RESP must affirmatively waive the applicable counsel rights and such waiver must be noted in the record. For civilian counsel, the SEN should inquire into the counsel's qualifications, e.g., where the counsel is a member of the bar, is the counsel licensed to practice law in the state, and what is the highest court of the state to which the counsel has been admitted to practice. If appointed military counsel is not qualified under Article 27(b), UCMJ, the explanation of the C-A shall be included in the record.)*

REC: Let the record reflect that this board is properly convened and constituted.

NOTE: Use the appropriate following paragraph for the particular board.

ADMINISTRATIVE SEPARATION BOARD

SEN: The board shall render findings based on the evidence of record and shall recommend retention in or discharge from the Coast Guard. Any reason(s) for separation supported by the evidence will be specified along with the appropriate characterization of service (honorable, general under honorable conditions, or other than honorable).

REENLISTMENT BOARD

SEN: The board shall render findings based on the evidence of record and shall recommend that you are qualified or not qualified to reenlist in the Coast Guard, or that you serve a probationary extension of enlistment for any period as may be specified not to exceed one year. If the recommendation is ineligible for reenlistment or probationary extension of enlistment the reason(s) will be specified according to the provisions of Article 12-B-5 of the Coast Guard Personnel Manual.

INCOMPETENCY REDUCTION BOARD

SEN: The board shall render findings based on the evidence of record and shall recommend that you are unqualified or not unqualified by reason of incompetency. If the recommendation is unqualified by reason of incompetency, the reason(s) will be specified, along with a recommendation as to the rate to which you should be reduced. The provisions of the Coast Guard Personnel Manual impose limitations. [Personnel Manual, COMDTINST M1000.6A, Article 5.C.38 and Section 12.B.].

PRE-HEARING MATTERS

NOTE: Pre-hearing matters include challenges, requests for R-C, WIT, or continuances, answers to same, proposed WIT and documentary evidence lists, or any other correspondence or documents concerning the board which is deemed appropriate.

SEN: Does the recorder or the respondent or counsel for the respondent challenge any member of this board?

R-C: (No.)(Yes.) If yes, but for the member under voir-dire, the other members shall not be present during the proceeding dealing with the challenge.

NOTE: The RESP may present evidence to show why a MEM should not sit on the board. The RESP may examine a MEM about the MEM's fitness, and such examination may be under oath at the RESP's discretion. If requested, the REC shall administer the following oath: "Do you (swear) (affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (So help you God.)" Challenges by RESP should be in writing. The board does not decide the issue; instead it reports the facts to the C-A who must determine if the MEM continues to sit. Copies of the communication and reply must be appended to the record.

SEN: Has the Recorder or respondent any pre-hearing matters that should be considered. If yes, they should be considered at this time.

REC: The convening order (as amended) has been marked as Exhibit(s) _____ and is made a part of the record at this time.

NOTE: Only one copy of all exhibits submitted need be provided to the board. The respondent and recorder should also have a copy.

SEN: Is there any objection to Exhibit(s) _____?

R-C: (No.) (Yes. I object to Exhibit(s) _____ because _____.)

Enclosure (8) to COMDTINST M1910.2

SEN: (Objection(s) (sustained) (overruled) and noted for the record.) Exhibit(s) ____ (is) (are) accepted and will be made a part of the record.

REC: The notification to the respondent that (he) (she) is being processed for (an administrative discharge) (eligibility for reenlistment), and the respondent's acknowledgment of the same has been marked as Exhibit(s) ____ and (is) (are) made a part of the record at this time.

SEN: Is there any objection to Exhibit(s) ____?

R-C: (No.) (Yes. I object to Exhibit(s) ____ because ____.)

SEN: (Your objection(s) (is) (are) (sustained) (overruled) and noted for the record.) Exhibit(s) ____ (is) (are) accepted and will be made a part of the record.

REC: The Senior Member's notification letter to the Respondent (as amended) has been marked as Exhibit(s) ____ and (is) (are) made a part of the record at this time.

SEN: Is there any objection to Exhibit(s) ____?

R-C: (No.) (Yes. I object to Exhibit(s) ____ because ____.)

SEN: (Your objections (is) (are) noted for the record.) Exhibit(s) ____ (is) (are) accepted and will be made a part of the record.

REC: There are (no) (the following) additional pre-hearing items to be placed before the board ____.

(SEN: Is there any objection to Exhibit(s) ____?)

(R-C: (No.) (Yes. I object to Exhibit(s) because ____.)

(SEN: (Your objections) (is) (are) (sustained) (overruled), and noted for the record.) (Exhibit(s) ____ (is) (are) accepted and will be made a part of the record.) (Exhibit(s) ____ (is) (are) excluded as being (totally irrelevant) (____)).

(The members shall disregard it and not consider it in their deliberations.)

SEN: Does the Respondent have any comments or additions to any of the foregoing pre-hearing matters?

R-C: (No.) (Yes.)

EVIDENTIARY MATTERS

REC: The following witnesses will be called to testify before this board:

NOTE: REC may verbally list the WIT. If the WIT and their order are on a written list, that document may be made an exhibit in lieu of verbally listing WIT here.

SEN: Does the Respondent have any objections to the witnesses who will testify before this board or their order of presentation?

R-C: (No.) (Yes. ____).

SEN: Did the Respondent request the Recorder to call other witnesses to testify before this board?

R-C: (No.) (Yes. ____). Are the witnesses here and ready to testify? (If not, why not?)

SEN: Does the Recorder have any documentary or real evidence relevant to this board's inquiry?

REC: I have the following exhibits ready for presentation to this board for its consideration in these proceedings. Copies of each of these documents have been previously provided or made available to the Respondent. I again show each Exhibit to the Respondent for inspection.

NOTE: REC will specifically identify each exhibit either verbally on the record or through an exhibit list to be placed in the record. The documents will be consecutively numbered as received, The exhibits may be introduced all at one time or individually.

REC: Exhibit ____ is ____, consisting of ____ pages.

Enclosure (8) to COMDTINST M1910.2

SEN: Is there any objection to Exhibit ____?

R-C: (No.) (Yes. I object to Exhibit because ____.)

SEN: (Your objection(s) (is) (are)(sustained) (overruled) and noted for the record.) (Exhibit ____ (is) (are) accepted and will be made a part of the record.) (Exhibit(s) (is) (are) excluded as being (immaterial) (incomplete) (unreliable) (irrelevant.) (The members shall disregard it and not consider it in their deliberations.)

NOTE: The above procedure is repeated for each exhibit if they are to be accepted individually.

REC: There are no further exhibits.

SEN: Does the Respondent have any other real or documentary evidence that the board should consider? If so, please hand the documents to the Recorder for examination and identification as exhibits.

R-C: We submit the following exhibit(s) to the board for its consideration in these proceedings.

NOTE: R-C may wait to present any documentary evidence until after the Recorder concludes presenting the case. R-C may then present each exhibit for examination and marking by the REC.

R-C: Exhibit ____ is ____ , consisting of ____ pages.

NOTE: Specifically identify each exhibit.

SEN: Is there any objection to Exhibit ____?

REC: (No.) (Yes. I object to Exhibit ____ because ____.)

SEN: (Your objections (is) (are) (sustained) (overruled) and noted for the record.) (Exhibit(s) ____ (is) (are) accepted and will be made a part of the record.) (Exhibit(s) ____ (is) (are)

excluded as being (irrelevant) (____). (The members should disregard it and not consider it in their deliberations.)

NOTE: The above procedure is repeated for each exhibit if they are to be accepted individually.

R-C: There are no further exhibits.

SEN: Before proceeding further, does anyone have any other matters to bring to the board's attention?

REC: (No.) (Yes. ____.)

THE PROCEEDINGS

SEN: All persons expecting to be called as witnesses in this hearing will withdraw from the hearing room.

SEN: The board will now permit opening statements. Does the Recorder wish to make an opening statement?

REC: (No.) (Yes. ____).

SEN: Does the Respondent wish to make an opening statement at this time or reserve it until later?

R-C: ____.

SEN: The Recorder may call the first witness.

REC: The first witness is [WIT NAME]

NOTE: If it is known in advance that the WIT will "affirm" rather than "swear," the words "swear" and "so help you God" should be omitted from the oath.

REC: Do you (swear) (affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?

Enclosure (8) to COMDTINST M1910.2

WIT: I do.

REC: Please be seated. Would you please state for the record your name (rank, rate, duty station, and branch of the armed forces) (and address).

NOTE: Use "and address" to identify civilian WIT. The address of the WIT should be omitted in appropriate cases, as where it might endanger the WIT.

WIT: ____.

REC: Do you know [RESP NAME] and would you please point to (him) (her).

WIT: ____.

REC: Let the record reflect that the witness has identified the Respondent.

NOTE: The above identification of the RESP procedures are not necessary where it is clearly inappropriate (e.g., a laboratory technician is the WIT). REC should conduct examination of the WIT at this point. If, before or during the examination, a WIT is suspected of committing an offense under the UCMJ, that WIT should be given the rights warning on page 17 by the SEN. The SEN should first consult legal counsel.

REC: ____.

REC: No further questions at this time.

SEN: Does the Respondent have any questions?

R-C: (No.) (Yes. ____.)

SEN: Does any member of the board have any questions?

MEM: (No.) (Yes. ____.)

SEN: Does the witness want to make a statement relating to matters pertinent to this investigation not previously brought out in testimony.

WIT: (No.) (Yes. ____.)

NOTE: Upon completion of the examination of the WIT, the SEN should give the WIT the following directions.

SEN: [WIT NAME], thank you. You are (temporarily) excused. (Please wait in ____.) (You should return to your normal duties.) (You are free to go.) As long as this hearing continues, do not discuss your testimony or knowledge of it with anyone except the Recorder, the Respondent, or the Counsel for the Respondent. If anyone else tries to talk to you about the case, stop them and report the matter to one of the persons I just mentioned or myself. Do you understand these instructions?

WIT: (Yes.) (____.)

SEN: You may be excused.

SEN: The Recorder may call the next witness.

NOTE: Repeat the above procedure for each WIT.

REC: I have no further witnesses to present at this time.

NOTE: See Page 19 of this enclosure for script for recess, adjournment, or reconvening.

SEN: [RESP NAME], you have already indicated your understanding of your rights in this proceeding, but I would like to reiterate your right to testify under oath or make an unsworn statement, or submit a written statement.

SEN: You have the right, at your option, to submit or not to submit to questioning by the board. The provisions of Article 31, Uniform Code of Military Justice, will apply. Your decision not to submit to questioning will not be considered in any manner against you and your decision not to testify or submit a written statement will not be considered by the board.

Enclosure (8) to COMDTINST M1910.2

SEN: If you elect to testify, you may be examined by the recorder or this board on any matter considered relevant to these proceedings, regardless of whether or not you testify to these matters when questioned by your counsel. You cannot, however, be compelled to answer questions concerning an offense of which you are suspect or with which you are charged, and you may refuse to answer any question by invoking Article 31, of the UCMJ.

SEN: In the alternative, you may make an unsworn statement, oral or written, to the board, either personally or through counsel. You may or may not submit to questioning on your unsworn statement. Unless you state that you submit to questioning on your unsworn statement, no questions will be asked. However, evidence may be introduced to rebut anything contained in your statement. Also, you may choose not to give any statement or to testify at all. If you so choose, the board will not consider it against you in any way. Do you understand these rights?

RESP: (Yes.) (No. ____.)

PRESENTING RESPONDENT'S CASE

NOTE: R-C may make an opening statement at this point if one was not made previously.

SEN: The Respondent may call the first witness.

R-C: The Respondent calls [WIT NAME]

NOTE: If it is known in advance that the WIT will "affirm" rather the "swear," the words "swear" and "so help you God" should be omitted from the oath.

REC: Do you (swear) (affirm) that the evidence you shall give in the matter now under investigation shall be the truth, the whole truth, and nothing but the truth (so help you God)?

Enclosure (8) to COMDTINST M1910.2

WIT: I do.

REC: Please be seated. Would you please state for the record your name (rank, rate, duty station, and branch of the armed forces) (and address).

NOTE: Use "and address" for civilian WIT. The address of the WIT should be omitted in appropriate cases, as where it might endanger the WIT.

WIT: ____.

REC: Do you know [RESP NAME] and would you please point to (him) (her).

WIT: ____.

REC: Let the record reflect that the witness has identified the Respondent.

NOTE: The above identification of the RESP procedures are not necessary where it is clearly inappropriate (e.g., a laboratory technician is the WIT). REC should conduct examination of the WIT at this point. If, before or during the examination, a WIT is suspected of committing an offense under the UCMJ, that WIT should be given the rights warning on page 17 of this Enclosure by the SEN. The SEN shall first consult legal counsel.

R-C: ____.

R-C: No further questions at this time.

SEN: Does the Recorder have any questions?

REC: (No.) (____.)

SEN: Does any member of the board have any questions?

MEM: (No.) (____.)

SEN: Does the witness aware of any matter pertinent to this hearing not previously brought out in testimony.

WIT: (No.) (Yes. ____.)

Enclosure (8) to COMDTINST M1910.2

NOTE: Upon completion of the examination of the WIT, the SEN should give the WIT the following directions.

SEN: [WIT NAME], thank you. You are (temporarily) excused. (Please wait in ____.) (You should return to your normal duties.) (You are free to go.) As long as this hearing continues, do not discuss your testimony or knowledge of it with anyone except the Recorder, the Respondent, or the Counsel for the Respondent. If anyone else tries to talk to you about the case, stop them and report the matter to one of the persons I just mentioned or myself. Do you understand these instructions?

WIT: (Yes.) (____.)

SEN: You may be excused.

SEN: The Respondent may call the next witness.

NOTE. Repeat the above procedure for each WIT.

R-C: I have no further witnesses to present at this time.

NOTE: See page 19 of this Enclosure for script for recess, adjournment, or reconvening.

SEN: Does the Recorder have any evidence to present in rebuttal?

REC: (No.)(Yes. ____.)

NOTE: The REC may introduce evidence to rebut the matters brought out in the RESP case. The R-C may introduce evidence in surrebuttal to the REC rebuttal evidence. If a WIT who has previously testified under oath is recalled, the SEN shall remind the WIT that the WIT is still under oath.

SEN: Does the Respondent or Recorder have anything further to present to this board?

REC: I have (nothing) further.

R-C: I have (nothing) further.

SEN: If either Respondent or Recorder has proposed findings for this Board to consider, you may submit them at this time. There being no other evidence to consider, you may make your closing statements.

NOTE If the junior board MEM is designated or acts as REC, this MEM may not make an argument. In this event, only the RESP or R-C may make argument. If a separate REC is designated, both counsel may make their closing argument beginning with REC.

(REC: ____.)

R-C: ____.

SEN: Are there any further matters for this board? If yes, the Recorder is requested to advise the board on the following issue.

REC: ____.

SEN: Does the Respondent wish to make a reply to this advice?

R-C: I do (not).

SEN: The Board will prepare written findings, opinions, and recommendations in closed deliberations. You will be allowed to review and comment upon these matters and the record of proceedings before the record is authenticated and submitted to the convening authority. The time is ____.

This hearing is concluded.

NOTE: The board will meet in closed session at the direction of the SEN for deliberations. After deliberations, the board shall open and announce its recommendation.

SEN: The hearing will come to order. The time is ____.

NOTE: If a different day or place, the date or place where the hearing is being conducted should be noted for the record.

Enclosure (8) to COMDTINST M1910.2

REC: All persons who were present when the hearing (recessed) (adjourned) are again present. No person required to be present is absent.

NOTE: Use the appropriate following paragraph to announce findings.

ADMINISTRATIVE SEPARATION BOARD

SEN: After due deliberation, the board recommends that [RESP NAME] be (retained in the Coast Guard) (with the following conditions: _____) (discharged from the Coast Guard with a [TYPE OF DISCHARGE] for [SPECIFIED REASON]). The board is closed at [HOUR AND DATE].

REENLISTMENT BOARD

SEN: After due deliberation, the board finds that [RESP NAME] is (not) eligible for reenlistment in the Coast Guard (with the following conditions: probationary extension of enlistment for ____.) he board is closed at [HOUR AND DATE].

INCOMPETENCY REDUCTION BOARD

SEN: After due deliberation, the board finds that [RESP NAME] is (not) unqualified by reason of incompetency (and that (he) (she) should be reduced to [RATE]). The board is closed at [HOUR AND DATE].

NOTE: This marks the end of the hearing proceedings. The board need not announce other findings of fact, opinions, or recommendations. The board will meet in closed session at the direction of the SEN to prepare written findings of fact, opinions, and recommendations for inclusion in the record.

RIGHTS WARNINGS

SEN: [WIT NAME] (the evidence)(your statement) (testimony) creates a suspicion that you may have committed the following offense(s): _____. I will now advise you of your rights before you answer any (more) questions.

- (1) You have the right to remain silent. You do not have to answer questions at all.
- (2) Before you decide whether or not to answer questions, you may consult with a lawyer.
- (3) If you decide to consult with a lawyer, I will stop this questioning. You may consult with a military lawyer without cost to you if the government intends to continue questioning you. In addition, you may consult with a civilian lawyer at your own expense.
- (4) If you decide to answer questions, anything you say may be used as evidence against you in any court-martial, nonjudicial proceeding, administrative proceeding, or civilian court.
- (5) If the questioning continues, you may stop it at any time by refusing to answer further questions or by requesting to consult with a lawyer.
- (6) You have the right to have a retained civilian lawyer, an appointed military lawyer, or both present during any further questioning. Do you understand these rights? W

WIT: (Yes.) (No. ____.)

SEN: Do you desire to consult with counsel?

WIT: (No.) (Yes).

SEN: Do you want to continue questioning?

WIT: (Yes.) (No.)

RECESS, ADJOURNMENT, OR RECONVENING

NOTE: In the event: of a recess or adjournment, the SEN should announce a time when the board will reconvene. An adjournment is for a period beyond the same day, a recess is a break in the proceedings not extending beyond the same day.

SEN: The time is ____ hours. The board will (recess) (adjourn) until hours, (on ____.) [If at a different location, add] (in [place/room] ____.)

NOTE: After the hearing has recessed or adjourned, the SEN will call it to order upon reopening the proceedings. The REC should then note the presence or absence of personnel on the record. The following is appropriate:

SEN: The hearing will come to order. The time is ____ hours.

NOTE: If a different day or place, the date or place where the hearing is being conducted should be noted for the record. 1

REC: All persons who were present when the hearing (recessed) (adjourned) are again present. No person required to be present is absent.

NOTE: If any required person is not present, their absence and the reason should be noted. In the absence of a MEM, the board may proceed with the investigation only if authorized and directed to do so by the convening authority. Unless a majority of the MEM are present, no business other than an adjournment shall be conducted. If it appears that a MEM will be absent for more than a short time and the absence reduces the board to less than a majority of the total membership, the convening authority shall be advised. The convening authority shall appoint additional MEM to ensure that at least two MEM will be present. Any substitute or additional MEM appointed shall examine the record of the proceedings conducted prior to sitting as a MEM, and accomplishment of that review shall be noted in the record. After reviewing the record, each substituted MEM shall participate fully in the subsequent proceedings of the board, its deliberations, findings of fact, opinions, and recommendations.

OBJECTION FORM

Party Objecting: **Respondent** **Recorder**

Specific Ground of Objection:

Specific Rights Affected:

Senior Member Ruling:

- 1) Sustained _____
- 2) Overruled _____
- 3) Deferred _____

|ub|Reason for Above Ruling:

Senior Member Signature

Objecting Party Signature